Volume II
Pages 1-209
Exhibits 9-19

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

C.A. No. 939 359

****

JANET C. MANGINI,
Plaintiff

vs.

R.J. REYNOLDS TOBACCO COMPANY;
R.J.R. NABISCO, INC.;
McCANN-ERICKSON USA.;
DOES 1-500, inclusive,
Defendants

****

DEPOSITION of JOSEPH R. DiFRANZA, M.D., a witness called by counsel for the Defendant, taken pursuant to Notice, before Joann Denning, a Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, at Milton, Laurence & Dixon, Mechanics Bank Tower, Suite 825, 100 Front Street, Worcester, Massachusetts, on Friday, July 31, 1992, commencing at 9:30 a.m.

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1 A P P E A R A N C E S

2

3 SANDRA CUNEO, ESQ.
Law Offices of Jonathan W. Cuneo
4 1300 Eye Street, N.W.
East Tower, Suite 480
5 Washington, D.C. 20005
On behalf of the Plaintiff.
6

DONALD J. WOOD, ESQ.
7 Wood, Clarkin, Sawyer & Ronan
225 Franklin Street
8 Boston, Massachusetts 02110
On behalf of the Defendant,
9 R.J. Reynolds Tobacco Company.

10 DANIEL W. DONAHUE, ESQ.
R.J. Reynolds Tobacco Company
11 401 North Main Street
Winston-Salem, North Carolina 27102
12 On behalf of the Defendant,
R.J. Reynolds Tobacco Company.
13

EDWARD GREER, ESQ.
14 63 Buckminster Road
Brookline, Massachusetts 02146
15 On behalf of the Deponent.

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17

18

19

20

21

22 Also Present: Lyle Smith

23

24

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I N D E X

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1 P R O C E E D I N G S

2 (Exhibit No. 9, Computer Printout, marked
3 for Identification)
4 (Exhibit No. 10, Handwritten Notes,
5 marked for Identification)
6 JOSEPH R. DiFRANZA, M.D., having been
7 duly sworn, on oath, deposes and testifies as
8 follows:
9 CONTINUED DIRECT EXAMINATION BY MR. DONAHUE
10 Q. Dr. DiFranza, I have before you two documents
11 marked as Exhibits 9 and 10. Exhibit 9 is a
12 computer printout which you furnished to us
13 which was not present during the course of the
14 last deposition, and Exhibit 10 is a page
15 which was just inadvertently not photocopied
16 from the materials which you produced to us.
17 Do you recognize both of those?
18 A. Yes.
19 Q. Do I accurately describe them?
20 A. Yes.
21 Q. Doctor, do you have your article with you that
22 was published in the December 11th issue of
23 the Journal of the American Medical
24 Association?

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1 A. I do.
2 Q. Would you refer, please, to Page 3151 at the
3 bottom right-hand portion.
4 A. I have it.
5 Q. At the bottom right-hand side, Doctor, I read,
6 "The tobacco industry has long followed a
7 policy of preferentially placing selected
8 advertisements where children are most likely
9 to see them." You see that portion of the
10 article?
11 A. I do.
12 Q. In support of that you cite three footnotes,
13 the first of which was written by
14 Mr. J.B. Tye. You know Joe Tye, do you not?
15 A. Yes, I do.
16 Q. Is he a member of the tobacco control people
17 that you described yourself in your original
18 letter to Rick Richards as belonging to?
19 A. Is he a member of DOC? Is that your --
20 Q. I would be not as restricted to just DOC. You
21 said, "Those of us in the tobacco control
22 business have long thought the Old Joe
23 advertising had a primary appeal to young boys
24 about 11." Do you remember that?

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1 A. Yes.
2 Q. You referred to yourself as one of those in
3 the tobacco control field?
4 A. Yes.
5 Q. Is Joe Tye one of those?
6 A. Yes.
7 Q. You also refer to Footnotes 28 and 29.
8 Footnote 29 is identified as RJR MacDonald
9 Document 286 produced in the Ad Ban litigation
10 in Canada, is that correct?
11 A. That's correct.
12 Q. How did you get a copy of that document?
13 A. Somebody from Canada mailed me a copy.
14 Q. Do you remember who it was?
15 A. Somebody from a Canadian clearinghouse on
16 smoking and health.
17 Q. I think the last time we were together you
18 were asked whether or not you were aware of
19 whether or not that document was the subject
20 of a protective order in the Canadian
21 litigation, and you indicated that you did
22 not, is that correct?
23 A. That's correct.
24 Q. Do I take it then that whoever sent the

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1 document to you did not indicate to you that
2 it was the subject of a protective order?
3 A. That's correct.
4 Q. You had RJR MacDonald 286 available to you
5 when you wrote this article?
6 A. I did.
7 Q. Where, if anywhere, in that document did the
8 word "children" appear?
9 A. I would have to see the document.
10 Q. Do you recall whether or not the word
11 "children" appeared in the document?
12 A. I would doubt that the word "children"
13 appeared in the document.
14 Q. The word "children" appears in your text,
15 correct?
16 A. Yes.
17 Q. There's a footnote cite to the document,
18 correct?
19 A. That's correct.
20 Q. But you doubt that the word "children" would
21 have appeared in the RJR MacDonald document,
22 correct?
23 A. That's correct.
24 Q. Is it not true that the target group or the

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1 target audience for the RJR MacDonald
2 advertising campaign were those people 18 to
3 34 with an emphasis on 18 to 24, do you
4 remember that?
5 A. I don't recall that document in particular.
6 Q. Again, when you wrote this document, you had
7 the document available to you?
8 A. That's correct.
9 Q. Would you have read it?
10 A. Yes. I have read it, yes.
11 Q. You have no recollection of its containing the
12 word "children"?
13 A. No.
14 Q. You have no recollection as to what the
15 intended target audience of that advertising
16 campaign was?
17 A. I don't recall which document. I had about
18 3 inches worth of documents.
19 Q. Was there a --
20 A. I don't recall which one was referring to
21 which campaign.
22 Q. Turn to the next page if you would, please.
23 On the left-hand column about 30 to 35 percent
24 of the way down, Page 3152, appears the

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1 statement, "The themes used in tobacco
2 advertising that is targeted at children are
3 the result of extensive research on children
4 conducted by the tobacco industry to 'learn
5 everything there was to learn about how
6 smoking begins.'" Is that correct?
7 A. That's correct.
8 Q. Doctor, again, you refer in that to Footnotes
9 35 to 38, is that correct?
10 A. That's correct.
11 Q. Can you tell me whether or not the word
12 "children" appeared in any of those documents
13 referred to in Footnotes 35 to 38?
14 A. Well, I can't say whether the word "children"
15 appeared or "youth." I know youth appeared
16 because it was a youth survey. Actually,
17 youth appears in the title of one of them, in
18 "Youth 1987," and it was a survey of youths
19 under the age of 18.
20 Q. Did the word "children" appear, to your
21 recollection?
22 A. I can't recall.
23 Q. Yet, you use the word "children," is that
24 correct?

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1 A. That's correct.
2 Q. I'll hand you --
3 A. One of those is called "Project 16," so it was
4 on 16-year olds.
5 Q. Is that an RJR document, or is that an
6 Imperial document?
7 A. That would be an Imperial document.
8 Q. I hand you a document which is marked at the
9 top "RJR 5." I'll ask you if you can identify
10 that as having been among the Canadian Ad Ban
11 documents that were furnished to you?
12 A. It was not.
13 Q. You didn't see that?
14 A. (Deponent nods)
15 Q. Read from it the third paragraph.
16 MS. CUNEO: Excuse me. Has that document
17 been marked?
18 MR. DONAHUE: Exhibit No. 11.
19 (Exhibit No. 11, Letter dated 1/30/87,
20 marked for Identification)
21 Q. Dr. DiFranza, you have read Exhibit 11?
22 A. I have.
23 Q. You say you have no recollection of the
24 clearinghouse, whatever kind of clearinghouse

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1 it was that sent you materials, having sent
2 you that document, is that correct?
3 A. That's correct.
4 Q. How can you describe the Canadian
5 clearinghouse that sent that material to you?
6 Is that an anti-smoking organization?
7 A. I'm not that familiar with the organization
8 itself.
9 Q. Do you know it by name?
10 A. It's called the Canadian Clearinghouse on
11 Smoking and Health.
12 Q. Do you know who its members are?
13 A. No.
14 Q. Do you know any people who belong to it?
15 A. I've corresponded with one person. I can't
16 recall the name right now.
17 Q. Do you recall their affiliation, if anything,
18 other than Canadian Clearinghouse on Smoking
19 and Health?
20 A. No.
21 Q. Would it be a fair comment to make that they
22 would be an anti-smoking organization or an
23 organization intended to try to control the
24 use of tobacco?

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Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 MS. CUNEO: Objection. Asked and
2 answered.
3 A. It's a tobacco control organization.
4 Q. Like the one that you and Joe Tye belong to?
5 A. Yes, that's another example.
6 Q. The third paragraph of this letter reads, "As
7 I have explained to you, our industry does not
8 market its products to those aged under 18.
9 Could you, therefore, please ensure that in
10 your analysis and reporting you focus your
11 attention on the 18 to 24 group." Did I read
12 that accurately?
13 A. Yes, you did.
14 Q. The letter is directed to an Elizabeth Jay,
15 J-A-Y, is that correct?
16 A. That's correct.
17 Q. Is she identified on the document as being
18 with the Creative Research Group Limited?
19 A. She is.
20 Q. Refer to Footnote 37 of your article, please,
21 sir. That's among the footnotes you refer to
22 in support of a statement "The themes used in
23 tobacco advertising that is targeted at
24 children are the result of extensive research

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on children conducted by the tobacco industry to 'learn everything there was to learn about how smoking begins,'" is that correct?

A. That's correct.

Q. Footnote 37 identifies a documented prepared by -- its entitled "Youth 1987" -- the Creative Research Group Limited, correct?

A. That's correct.

Q. Same name as the affiliation indicated for Elizabeth Jay on Exhibit 11, is that correct?

A. That's correct.

Q. Wouldn't you say it's a fair assumption to make that RJR MacDonald informed the Creative Group Limited on January 30, 1987, that the tobacco industry does not market its products to those under age 18?

MR. GREER: Objection.

MS. CUNEO: Objection.

Q. From the document. I'm not asking you to --

MR. GREER: Objection. He's not going to make assumptions based on some document that you've provided.

Q. The document, Dr. DiFranza, that we've provided to you, you said you hadn't seen

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1 before, is that correct?
2 A. That's correct.
3 Q. Despite the fact that you got some 3 inches of
4 paper from the RJR MacDonald trial, is that
5 correct?
6 A. That's correct.
7 Q. Did you only get documents that supported the
8 proposition that the Canadian tobacco industry
9 advertised to children? Did you not get
10 anything that fairly showed what the evidence
11 was?
12 MS. CUNEO: Objection. Objection.
13 Q. Go ahead. They get paid to do that. Our
14 system not only tolerates but encourages that
15 sort of thing. So go ahead.
16 MS. CUNEO: I would ask that the question
17 be rephrased. It's compound. It's leading.
18 It assumes facts not in evidence.
19 MR. DONAHUE: It is probably so remote in
20 time from the time I asked it that it's
21 forgotten, so I'll do that again.
22 Q. Dr. DiFranza, the document you have in front
23 of you, Exhibit No. 11, contains the words
24 "our industry" -- of course referring to the

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1 Canadian tobacco industry -- "does not market
2 its products to those aged under 18," is that
3 correct?
4 A. That's correct.
5 Q. It was directed, according to its date,
6 assuming that the date was correct, January
7 30, 1987, to the Creative Research Group
8 Limited, correct?
9 A. That's correct.
10 Q. The very organization that you referred to in
11 your Footnote 37, correct?
12 A. That's correct.
13 Q. In support of the proposition that "the themes
14 used in tobacco advertising that is targeted
15 at children," correct?
16 A. That's correct.
17 Q. Did you mean when you wrote your article when
18 you used the word "children" there to refer to
19 people that were 18 to 24?
20 A. No.
21 Q. When you use the word "children" in your
22 article generally, Doctor, what age group are
23 you referring to, if any?
24 A. Under 18.

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1 Q. So it would be a fair assumption to make on a
2 going forward basis that when we see the word
3 "children" appear in your article it is your
4 intention to refer to those under 18, right?
5 A. That's right.
6 Q. Yet, you're not aware of any document produced
7 to you in connection with the Canadian Ad Ban
8 litigation that referred to marketing to those
9 under 18?
10 A. Despite this letter here, my reading of that
11 document convinced me that the intent was to
12 further the marketing of tobacco for
13 children. I don't have the document in front
14 of me now, so I can't say specifically what it
15 was in the document.
16 Q. So that was your take-away?
17 A. That's right.
18 Q. In your deposition testimony here today
19 unaided by our being able to look at the
20 document -- because you didn't bring it with
21 you, right?
22 A. That's correct.
23 Q. -- is that your impression was that it was the
24 intention of RJR MacDonald to market to those

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1 under 18, correct?
2 A. That's correct.
3 Q. Doctor, if you would please refer to the same
4 page of your article, 3152, the center column
5 towards the bottom.
6 A. Okay.
7 Q. At the very bottom it refers to two marketing
8 strategy documents that according to your
9 article also revealed that it's the youngest
10 children that they -- the Canadian tobacco
11 industry I guess you're referring to -- are
12 after, is that correct?
13 A. That's correct.
14 Q. Then you quote, "Whose behavior are we trying
15 to affect?: new users," and cite Footnote 48,
16 correct?
17 A. That's correct.
18 Q. Is that an accurate quote?
19 A. Yes.
20 Q. Is that a complete quote?
21 A. I believe it is.
22 Q. Is there anything in between the word "affect"
23 and "new users" in the original document?
24 A. If there had been, I should have put three

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1 dots to indicate a gap.
2 Q. You should have, shouldn't you?
3 A. Yes.
4 Q. If you didn't, that was a mistake?
5 A. That would be true.
6 Q. I'll ask you if you'll take a look at a
7 document which we'll identify as Exhibit
8 No. 12.
9 (Exhibit No. 12, Document, marked for
10 Identification)
11 Q. Tell me when you've had a chance to look at
12 that, Doctor.
13 A. I've had a chance.
14 Q. Do you recognize that?
15 A. Yes.
16 Q. Does it contain the words that we just read
17 from your article, "Whose behavior are we
18 trying to affect?" and then there's also the
19 words "new users" in that document I've just
20 given you?
21 A. Yes.
22 Q. That in fact was a page from among the
23 Canadian Ad Ban documents that was furnished
24 to you, was it not?

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1 A. It is.
2 Q. Read for the record what appears in the
3 Canadian Ad Ban documents that were actually
4 sent to you between the word "affect" followed
5 by a question mark and the words "new users."
6 A. Well, this is a summary page, and it is quite
7 probable that words to the same effect
8 appeared elsewhere in the document, so it
9 wasn't necessarily that I was quoting this
10 page.
11 Q. Do you have a specific recollection of having
12 quoted from any other page?
13 A. I would not put this in quotations the way it
14 appears here if that was the only citation.
15 Q. Because that would be a miscitation or
16 misquote?
17 A. That's not the way I work, and I think --
18 Q. You received, did you not, a letter within the
19 past three or four weeks from the editors of
20 the Journal of the American Medical
21 Association enclosing for you a letter
22 received by them from Carl Irving, a lawyer in
23 Canada, did you not?
24 A. I think it was a little bit longer ago, but I

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1 did receive that.
2 Q. Carl Irving, of course, is the Canadian lawyer
3 who represented RJR MacDonald in the Canadian
4 Ad Ban litigation, is that correct?
5 A. I wouldn't know.
6 Q. He identified himself in that capacity in that
7 letter. You did get Carl Irving's letter, did
8 you not?
9 A. Yes.
10 Q. Did the editors of JAMA -- by that, of course,
11 I mean the Journal of the American Medical
12 Association -- indicate that they had received
13 that letter from Mr. Irving and sent it along
14 to you for your review and possible response?
15 A. That's correct.
16 Q. Did you respond to it?
17 A. They sent it with a cover letter saying that
18 it had been received far too late to be
19 published in JAMA and that if I so chose I
20 could respond to the letter personally.
21 Q. So it's your understanding that Carl Irving,
22 RJR MacDonald's Canadian counsel, sent a leter
23 to the editor to JAMA pointing out to them the
24 factual and contextual errors in your citing

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1 to the Canadian Ad Ban materials, but they
2 said that they received the letter from him
3 too late and it was too long, and they sent it
4 to you for response if you chose to, right?
5 A. That's right.
6 Q. Did you read the letter?
7 A. I did.
8 Q. Did you respond to it?
9 A. No.
10 Q. Did you analyze it at all to see if it was
11 accurate?
12 A. Not really.
13 Q. Dr. DiFranza, in that letter that was received
14 by you, Carl Irving pointed out to you that
15 you had misquoted from the Canadian Ad Ban
16 documents by leaving out the words
17 "Demographics: Adults - males (predominant) -
18 females (must not be excluded). 18 - 34;
19 Emphasis 18 - 24 (new users)."
20 Mr. Irving, in the letter to JAMA,
21 pointed out that you had in your article
22 misquoted a Canadian Ad Ban testimony document
23 by leaving out all the words that I have just
24 read that appeared in the Canadian Ad Ban

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1 documents between "affect?" and "new users,"
2 didn't he?
3 A. I don't recall.
4 Q. You don't remember him accusing you of doing
5 something which you have just today said is
6 not something you would do because it would be
7 wrong?
8 A. No, I don't recall.
9 Q. Did you, when you received Mr. Irving's
10 letter, try to go back and look at the
11 documents that you received from Canada to see
12 if, in fact, you had accurately quoted from
13 them?
14 A. No.
15 Q. Why not?
16 A. Well, some of the documents he quoted from I
17 did not have, so there was no way for me to go
18 back and look at them.
19 Q. But you had some. Did you go back and look at
20 the ones you had?
21 A. No.
22 Q. You didn't care?
23 A. No.
24 Q. You didn't care about the accuracy of the

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1 quote?
2 A. I do care about the accuracy of my quote.
3 Q. Why didn't you want to check on it, Doctor?
4 A. Probably because of the source.
5 Q. The source being a lawyer?
6 A. Tobacco company.
7 Q. A tobacco company lawyer?
8 A. Yeah.
9 Q. By definition lies?
10 A. No, because the gist of the letter he said
11 that -- it seemed that he was offended that --
12 and this was the overall take I took from his
13 letter -- was that he was upset that your
14 company, RJR MacDonald Company, was mentioned
15 just opposed to documents from Imperial
16 Tobacco Company, which, of course, is your
17 competitor, and he was concerned that readers
18 might therefore conclude that activities
19 attributed to Imperial Tobacco were actually
20 by RJR. So that's what I took as his main
21 concern.
22 Q. But Mr. Irving did specifically refer to your
23 article in the center column at the bottom of
24 Page 3152 where your quote reads, "Whose

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1 behavior are we trying to affect?:" -- no
2 three little dots -- "new users." He did
3 specifically refer to that quote, didn't he?
4 A. I don't recall.
5 Q. You still have his letter?
6 A. It's probably in my office.
7 Q. Dr. DiFranza, when this deposition is all over
8 with, it's going to be typed up. You're going
9 to get a chance to read it. I would ask you,
10 if you would, to go back and see if you can
11 find his letter, and more importantly, to look
12 through the RJR MacDonald documents that you
13 have in your office and tell us, if you will,
14 where in them, if anywhere, there appears the
15 statement quoted by you at the center of the
16 bottom of Page 3152 without the elusion (sic)
17 marks indicating that some words have been
18 left out between affect and users. Would you
19 be willing to do that?
20 A. I would.
21 Q. If, in fact, you can't find such a document
22 and need access to other Ad Ban documents,
23 simply let me know and I'll make them
24 available to you, all right?

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1 A. Okay.
2 Q. If, in fact, you cannot find where you
3 accurately quoted, would you be willing to
4 publicly acknowledge that you misquoted?
5 MR. GREER: Objection.
6 Q. You said you will do that?
7 MS. CUNEO: I would ask that all the
8 Canadian documents then be released. I
9 understand that they're subject to a
10 confidentiality order. But we're not going to
11 play these kinds of games.
12 MR. DONAHUE: It's not a game, not a
13 game. Dr. DiFranza said he would not have
14 misquoted like that. We have a document in
15 front of him that shows that he did misquote.
16 MS. CUNEO: This is one of many
17 documents. You keep suggesting that he has
18 misquoted.
19 MR. DONAHUE: I did more than suggest. I
20 flat out said he misquoted, based on Exhibit
21 No. 12. But I may be wrong because there may
22 be another document that he has in his files.
23 And if there is another document that he has
24 in his files that shows he didn't misquote,

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1 then being as publicly visible a person as
2 Dr. DiFranza is in the anti-tobacco world I
3 would just wonder if in a matter of scientific
4 and personal ethics and integrity you'd admit
5 that you made a mistake. That's all I ask.
6 A. If I misquoted, then I would be happy to admit
7 it. It's also possible that these documents
8 before they actually appear in print go
9 through many revisions and then the editors
10 and the journals also make typographical
11 changes, and it's possible that I could
12 compare my version to what actually appears in
13 print here.
14 Q. Fine. Were you furnished final galley proofs?
15 A. Yes.
16 Q. So the final galley proof would be in the same
17 form as Exhibit 7, correct?
18 A. Yes.
19 Q. And would contain the error. If, in fact,
20 some one of the editors made the change, then
21 it would be an error made by someone else that
22 you just didn't catch?
23 A. That's correct.
24 Q. And you'd be glad to look at your version that

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1 you submitted to JAMA after taking into
2 consideration the peer reviewer's comments?
3 A. Yes.
4 Q. At Page 3152 in that same column, Doctor, a
5 little bit farther up -- I'll come back to
6 this. Doctor, referring to your article
7 again, Page 3152, in the center column just
8 slightly more than halfway down, you make the
9 statement, "In countries where advertising has
10 been totally banned or severely restricted,
11 the percentage of young people who smoke has
12 decreased more rapidly than in countries where
13 tobacco promotion has been less restricted."
14 Did I read that correctly?
15 A. Hm-hm.
16 Q. "There are other lines of evidence" -- I'm
17 quoting again -- "There are other lines of
18 evidence indicating that tobacco advertising
19 increases the number of children who use
20 tobacco. In countries where advertising has
21 been totally banned or severely restricted,
22 the percentage of young people who smoke has
23 decreased more rapidly than countries where
24 tobacco promotion has been restricted." I

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1 read that correctly, didn't I?
2 A. You did.
3 Q. You cite Footnote 44?
4 A. I do.
5 Q. In turn, that's a reference to the New
6 Zealand's Toxic Substances Board, is that
7 correct?
8 A. That's correct.
9 Q. Is that the only authority that you looked
10 for, Doctor, in support of the proposition
11 that "In countries where advertising has been
12 either banned or severely restricted, the
13 percentage of young people who smoke has
14 decreased more rapididly than in countries
15 where tobacco promotion has been less
16 restricted"?
17 A. That is the most comprehensive analysis I'm
18 aware of.
19 Q. Would you say it's the most credible analysis?
20 A. Because of that I would.
21 Q. Would you say it is the most commonly accepted
22 analysis?
23 A. I wouldn't have any way of judging that.
24 Q. Would you say it's the most rigorously

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1 reviewed and conducted analysis?
2 A. I don't know who reviewed it or how rigorously
3 they were.
4 Q. You cite it as authoritative?
5 A. Yes.
6 Q. Upon what basis did you conclude that it was
7 authoritative?
8 A. Because I looked at the data and concluded it
9 had the largest number of countries of any
10 analysis of that type.
11 Q. Did you look at any other data?
12 A. I'm aware of other comparisons of one country
13 to another one country.
14 Q. Did the other data come to contrary
15 conclusion?
16 A. Yes.
17 Q. The World Health Organization came to a
18 contrary conclusion, did they not?
19 A. I'm not aware of that.
20 Q. You will be in a minute. You're aware that in
21 the Canadian Ad Ban case the Toxic Substances
22 Board report was considered by the Court in
23 evidence, are you not?
24 A. I am.

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1 Q. I have in front of me a copy of the report
2 from the judge in the Canadian Ad Ban case,
3 and I'd like to read to you a portion of it
4 from Page 512. I'm not a Canadian lawyer, not
5 a Massachusetts lawyer, not much of a North
6 Carolina lawyer, so I don't really know how
7 you cite these kind of things. But it appears
8 to be an '82 Dominion Law Reports Forth at
9 Page 513, which is a publicly available
10 published document.
11 I'd like to read the portion as follows:
12 "The virtual totality of the scientific
13 documents in the state's possession at the
14 time the act was passed do not demonstrate
15 that a ban on advertising would affect
16 consumption. It was only with the Toxic
17 Substances Board report of New Zealand
18 published in May of 1989 that the first
19 serious attempt was made to link advertising
20 with consumption. With respect to the TSB
21 report, the Court" -- that's the judge writing
22 -- "can only note that it contains serious
23 methodological errors and a lack of scientific
24 rigor which renders it for all intents and

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1 purposes devoid of any probative value. It is
2 a report with an obvious point of view, and
3 its conclusions reflect that point of view.
4 In this regard, the Court agrees entirely with
5 the analysis of the report made by RJR's
6 counsel in his argument and concludes that the
7 TSB report as an extrinsic document is of no
8 probative value."
9 This is an opinion that was rendered by a
10 judge in Canada on July 26th, 1991. Your
11 article was published on December the 11th,
12 1991, is that correct?
13 A. That's correct.
14 Q. So this opinion would have been available to
15 you prior to the time your article was
16 published?
17 A. It would have.
18 Q. It would have been?
19 A. Yes.
20 Q. You want to read it to make sure I read it
21 right?
22 A. No.
23 Q. Did you consider the conclusions of the judge
24 in Canada who heard evidence for about three

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1 weeks on this very issue from the Canadian
2 government trying to support the validity of
3 this report and from RJR MacDonald and
4 Imperial attacking it, did you read that at
5 all?
6 A. I've heard it quoted.
7 Q. When did you hear it quoted?
8 A. I don't recall.
9 Q. Before you wrote your --
10 A. I don't recall.
11 Q. So you may have heard it before you wrote your
12 article?
13 A. I may have.
14 Q. Did you investigate the substance of those
15 reports?
16 A. I hold that judge's opinions in general to be
17 worthless.
18 Q. He's not a tobacco lawyer, is he?
19 A. I believe he used to be a tobacco lawyer. He
20 had been previously employed by a tobacco
21 company. My understanding is his general
22 opinion on that case to me sounded very
23 ignorant.
24 Q. It differs rather substantially with your

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1 opinion?
2 A. Yes.
3 Q. Therefore was ignorant?
4 A. No. I can agree to disagree with people whose
5 opinions I respect highly.
6 Q. But he's a judge?
7 A. Yes. He's not a scientist.
8 Q. But he heard scientists presumptively in
9 evidence, correct? Is there any judge
10 anywhere that's looked at this report, to your
11 knowledge, that's come to a contrary
12 conclusion?
13 A. Any judge?
14 Q. Yes.
15 A. No. I'm also not aware of any scientist who
16 has criticized that report, and I am not the
17 only scientist --
18 Q. Perhaps other than the ones that testified at
19 the Canadian Ad Ban trial?
20 A. I'm not aware of any scientists.
21 Q. Do you know Dr. Jeffrey Harris?
22 A. I know of him.
23 Q. Do you know that he testified in the Canadian
24 Ad Ban case?

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1 A. No.
2 Q. So you wouldn't know what he had to say about
3 the TSB report, would you?
4 A. No.
5 Q. Do you know that he testified for the
6 plaintiffs and against the defendants in
7 smoking and health litigation in the United
8 States?
9 A. I am not aware of that.
10 Q. So you're not aware of any scientist who has
11 criticized the New Zealand Toxic Substances
12 Board report, and you hold in little regard
13 the opinion of the Canadian judge whose
14 opinion contained the language I just read, is
15 that correct?
16 MS. CUNEO: Objection. Compound, asked
17 and answered.
18 A. That's correct.
19 Q. For that reason you didn't think it even
20 worthwhile to investigate the scientific
21 validity of the New Zealand Toxic Substances
22 Board report before you cited it as the only
23 authority in support of your proposition in
24 your article --

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1 A. That's not.
2 Q. -- that a ban on advertising reduces
3 consumption?
4 MS. CUNEO: Objection. Characterizes the
5 witness' testimony.
6 A. That's not true at all.
7 Q. What did you do?
8 A. I sent away to New Zealand, and I obtained the
9 actual report myself, and I looked at the data
10 myself to decide whether or not I thought it
11 was an authoritative report.
12 Q. You came to a conclusion apparently different
13 from that of the judge, correct?
14 A. That's correct.
15 Q. The judge was a tobacco lawyer at one time and
16 therefore had a point of view?
17 MS. CUNEO: Objection.
18 Q. Is that what you're saying?
19 A. No. I'm saying I'm a trained scientist and an
20 expert in this field, and I used my expertise
21 to judge whether I felt this report was
22 authoritative.
23 Q. You didn't come to this with a pre-existing
24 point of view? You're not trying to tell us

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1 that, are you?
2 A. I analyze each report. There are many reports
3 that I've read that I don't quote from.
4 Q. But you didn't come to the exercise of reading
5 the New Zealand TSB report without a
6 pre-existing point of view, did you, Doctor?
7 A. No.
8 Q. You have a point of view, and it's very
9 strongly held, is it not?
10 A. Yes.
11 Q. And very widely published?
12 A. Yes.
13 Q. You familiar with the World Health
14 Organization?
15 A. I am.
16 Q. What is it?
17 A. I believe it is under the auspices of the
18 United Nations, the World Health Organization,
19 and it works to coordinate health-promoting
20 efforts throughout the globe.
21 Q. Authoritative organization?
22 A. It's more of a political body than a
23 scientific body.
24 Q. Do they have a pre-existing point of view with

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1 respect to tobacco use that you're aware of, a
2 bias?
3 A. A bias? They're a health organization.
4 Q. So if they had a bias, it would be against
5 tobacco, you would assume?
6 A. I would assume.
7 MR. DONAHUE: I have a report here that
8 I'd like to ask be identified as Exhibit
9 No. 13.
10 (Exhibit No. 13, Report, marked for
11 Identification)
12 (There was a discussion off the record)
13 Q. You saw me physically tear from this 1987
14 "Health Behaviour in School Children" report
15 one page? I'm not asking you to verify that
16 when they were put together they were put
17 together right. I'm just asking you to say
18 you saw me take them apart, right?
19 A. I did.
20 Q. At the top of the left-hand column where it's
21 marked, Doctor, I read, "The lack of clear
22 differences in smoking habits between
23 countries probably reflects the selection of
24 countries involved in the study in 1983-84.

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1 However, since Norway and Finland are
2 countries with a restrictive legislation on
3 advertising of tobacco products, and the other
4 two countries are not, a difference might have
5 been expected. No such systematic differences
6 are found. Obviously, comparisons of trends
7 over time represent a more solid empirical
8 basis for further elaboration of this
9 phenomenon."
10 MS. CUNEO: I would request you show the
11 witness the entire report.
12 (Document handed to the deponent)
13 Q. I read it right, didn't I?
14 A. You did.
15 Q. It did say that two countries that had
16 restrictive advertising were compared with two
17 countries that did not have restrictive
18 tobacco advertising, the expectation was that
19 there would be a consumption difference, but
20 the realization from the empiral data which we
21 referred to in this article did not support
22 that expectation, is that correct?
23 A. I can't comment without reading the whole
24 study.

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1 Q. Have you ever seen that before?
2 A. No.
3 Q. So when you were doing your research into the
4 issue of whether or not a reduction in
5 advertising or an elimination of advertising
6 would affect consumption, you didn't reach out
7 to see whether or not the World Health
8 Organization had looked at this issue?
9 A. I know that -- I believe the World Health
10 Organization has called for a worldwide ban on
11 the promotion of tobacco.
12 Q. That's a different issue. I didn't ask you
13 that. I asked you whether or not the World
14 Health Organization has ever found from
15 empirical data that a ban on or restrictions
16 in advertising tobacco results in a reduction
17 of consumption. That's all I ask. Canada had
18 a ban on tobacco advertising, but it didn't do
19 anything with consumption.
20 MR. DONAHUE: You're supposed to object
21 to that.
22 MR. GREER: Feel free.
23 Q. The question, Dr. DiFranza -- and I apologize
24 for the editorial comment. It was

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1 unprofessional of me, and I'm sorry. The
2 question is whether or not you reached out to
3 the World Health Organization to see if they
4 had collected data on the issue of whether
5 restrictions in or banning of advertising
6 resulted in a reduction in consumption of
7 tobacco products?
8 A. I did not look to the World Health
9 Organization for that.
10 Q. Who else did you ask for documents from other
11 than the New Zealand Toxic Substances Board,
12 anybody?
13 A. I have a whole file and cabinet full of
14 documents on tobacco and a whole section on
15 advertising of tobacco.
16 Q. You cited in your article, Footnote 44, just
17 the New Zealand Toxic Substances Board?
18 A. Yes.
19 (There was a discussion off the record)
20 Q. Dr. DiFranza, referring back to your article
21 appearing in the Journal of the American
22 Medical Association, you and other researchers
23 and other authors of the article gathered data
24 from school children in, what was it, five

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1 different locations?
2 A. That's correct.
3 Q. Among the data that you gathered from the
4 school children is whether or not they were
5 smokers, is that correct?
6 A. That's some of the data we collected.
7 Q. You also collected data on brand preference
8 among students who smoke, is that correct?
9 A. That's correct.
10 Q. By these next series of questions I'm going to
11 try to find out how many smoking students
12 there were in your survey. You have a table
13 at the top of Page 3151 which indicates that
14 86 out of 261 students indicated a preference
15 for Camels. You see that on the total
16 students column?
17 A. I do.
18 Q. In the text just under that in the center, you
19 have a statement, "About equal proportion of
20 adults, 28.2, and children, 29.0, percent
21 reported some current cigarette use," is that
22 correct?
23 A. That's correct.
24 Q. A little bit earlier in the article, the next

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1 page earlier, 3150, on the right-hand column
2 under results, the second sentence reads,
3 "Usable surveys were obtained from 1,055
4 students," is that correct?
5 A. That's correct.
6 Q. Do I take it then that your population of
7 students was 1,055?
8 A. That's correct.
9 Q. If 29 percent of them reported some current
10 cigarette use, 29 percent of 1,055 is what?
11 A. 306.
12 Q. 306. Where does 261 come from?
13 A. Offhand, I don't have all the data printouts
14 with me, but I would say that these on the
15 percent that smoke Camel, where we are giving
16 a brand preference, that we probably included
17 only those who stated a brand preference. So
18 I would say out of 261 students stating a
19 brand preference 33 percent indicated Camel.
20 Q. You have the copy of the Exhibit 3 that we had
21 here last time which are the documents which
22 you produced?
23 A. Yes.
24 Q. You have it there with you?

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1 A. I do.
2 Q. Look at Page 75.
3 A. I don't have mine numbered.
4 Q. We tried to number them last time so we could
5 keep up with each other. Page 75 and 76,
6 yours are not numbered?
7 A. No. These are my own copies.
8 Q. Why don't I give you a set that's numbered.
9 You're perfectly welcome to compare what I
10 just gave you to what you have any time you
11 have any question about the accuracy. I can
12 only vouch for the fact we tried to copy them
13 accurately.
14 Page 75 and 76, Doctor, that's the final
15 questionnaire that was addressed to the
16 children, is that right?
17 A. It is.
18 Q. At Question 17 some information was asked
19 about how often you smoke, and the respondents
20 are afforded a chance to make one of four
21 choices, is that correct?
22 A. That's correct.
23 Q. Either I don't, about once a month, about once
24 a week, or almost every day, correct?

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1 A. Correct.
2 Q. Then it says in response to No. 20, If you
3 smoke, what's your favorite brand? Is that
4 right?
5 A. That's correct.
6 Q. There's a blank there that they can fill
7 something in, right?
8 A. That's correct.
9 Q. Then there's also a place to mark I don't
10 smoke, is that correct?
11 A. That's correct.
12 Q. According to my calculations, Doctor, if you
13 had 1,055 usable surveys and 29 percent of
14 them reported some current cigarette use,
15 that's 306 people. Is that what we came up
16 with a minute ago?
17 A. That's correct.
18 Q. Yet, your chart at the top of Page 3151 tells
19 us that when you're asking for brand
20 preference or when you're reporting brand
21 preference you report on 261 students, is that
22 correct?
23 A. That's correct.
24 Q. That's, according to my arithmetic, a

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1 difference of about 45, correct?
2 A. Correct.
3 Q. Those 45 people are roughly 17 percent of the
4 261, is that right?
5 A. Want me to do it on the calculator?
6 Q. If you want to.
7 MS. CUNEO: 45 people are 17 percent of
8 261?
9 MR. DONAHUE: That's what I said.
10 A. You should be taking the percent of 306.
11 Q. What percentage is it of 306?
12 A. 14.7.
13 Q. What percentage is it of 261? I got 17, but I
14 don't know if I did it right. I just divided
15 261 into 45.
16 A. Your point?
17 Q. My question is, what percent of 261 is 45?
18 A. 17 percent.
19 Q. But it's 14.7 percent of 306?
20 A. Yes.
21 Q. So somewhere 14.7 percent of the children that
22 you took information from, which you reported
23 at the top of the middle column of Page 3151,
24 reported some current cigarette use,

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1 disappeared when you reported on the number of
2 children that expressed a preference for
3 Camel, is that correct?
4 A. No.
5 Q. Where did they go?
6 A. They didn't disappear. They simply did not
7 indicate a favorite brand.
8 Q. So there were in your questionnaires and there
9 is captured into Exhibit No. 9 then
10 information from which we can determine that
11 of the 306 people who reported some current
12 cigarette use 45 did not indicate a favorite
13 brand, is that correct?
14 A. We're going on a lot of assumptions here
15 because we don't have the actual readout from
16 the computer that states exactly how many
17 students were smoking.
18 Q. Yes, we do. That's Exhibit 9.
19 A. We're doing some multiplication here by not
20 looking at the actual number.
21 Q. Exhibit 9 is the printout you gave to us,
22 isn't it?
23 A. Yes.
24 Q. It might take a little while to ferret through

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1 it, but it's here.
2 A. You're asking me to do some off the cuff
3 calculations which I would not do for my
4 actual study. I would actually count each one
5 and not get an estimate of this and an
6 estimate of that.
7 Q. I understand. That's fair enough.
8 A. If you're asking me to account for every
9 single subject, I can't.
10 Q. What I'm trying to do, Doctor, is to find out
11 the answer to the question, if there were 306
12 students who reported quote, some current
13 cigarette use, close quote, yet when you
14 reported brand preference you only reported on
15 261. I'm trying to find out why.
16 A. That would be simply that some of the students
17 who smoke did not indicate a brand preference.
18 Q. Did you make that clear in your article? And
19 if so, where? I'll tell you what. Let's save
20 that one just for a second. We'll come back
21 to it.
22 The last time you were deposed, Doctor,
23 you indicated that for purposes of brand
24 preference, gathering brand preference data,

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1 children were defined as someone -- or smokers
2 were defined as someone who smoked one
3 cigarette a month or more. Do you remember
4 that?
5 A. No.
6 Q. Here's a copy of your deposition. Look at
7 Page 123 and 124 and see if it refreshes your
8 recollection. By the way, have you read that
9 version of your deposition before today?
10 A. I have never seen it before.
11 Q. You haven't been furnished a copy of it?
12 A. No.
13 MR. DONAHUE: Did we get you one, Ed?
14 MR. GREER: I have a copy of it.
15 MR. DONAHUE: But the doctor hasn't been
16 shown a copy of it?
17 MR. GREER: That's correct.
18 A. Your question again.
19 Q. The question is, in that deposition at Pages
20 123 and 124 did you testify -- and I don't
21 have it front of me. You're reading it, so I
22 can't tell you what line and page precisely it
23 appears -- but did you not testify that
24 someone who indicated that they smoked a

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1 cigarette or more a month were considered to
2 be smokers for purposes of gathering brand
3 preference data?
4 A. Yes.
5 Q. You did make that statement?
6 A. That's true. That's what I'm reading.
7 Q. You made the statement, and it's true,
8 correct?
9 A. I see a lot of yes/no answers here, but I
10 don't see a statement.
11 Q. At Page 124, Line 7 is the question:
12 "QUESTION: So if an individual smoked one
13 cigarette within the last month and indicated
14 that their brand preference was Camel after
15 having been shown several Camel ads, that
16 person would be counted as a child who smoked
17 Camels," is that true?
18 A. That's true.
19 Q. Just ahead of that at the bottom of Page 123:
20 "QUESTION: By a smoker in connection with the
21 children who were asked the brand preference
22 question, how many cigarettes did they need to
23 smoke in order to be categorized as a smoker,"
24 the answer was: "Answer: Any within the last

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1 month."
2 A. That's correct.
3 Q. Does that correctly capture what you said?
4 A. Yes.
5 Q. Is it, in fact, true?
6 A. It's true.
7 Q. Look at your article at Page 3150, the top of
8 the center column, where it reads, "Children
9 were considered to be smokers if they had
10 smoked one or more cigarettes during the
11 previous week." You see that?
12 A. Yes.
13 Q. Where in this article do you tell the
14 scientific world that children were considered
15 smokers for purposes of brand preference if
16 they indicated they smoked one or more
17 cigarettes during the previous month?
18 A. That should read previous month in the
19 article.
20 Q. It was wrong?
21 A. That's right.
22 Q. Have you made that correction anywhere before
23 today?
24 A. No.

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1 Q. Would you be willing to make that correction?
2 A. Of course.
3 Q. Would it make a difference in your result?
4 A. None whatsoever.
5 Q. When you say "none whatsoever," that tells me
6 that you have some measure of certainty in
7 your response, is that correct?
8 A. Yes.
9 Q. So that if you were to exclude all of the
10 respondent children who marked at least once a
11 month in response to the answer to Question
12 No. 17 at Page 76 of Exhibit 3, if you
13 excluded all those respondents, the ones who
14 X'd about once a month, from your analysis and
15 did not gather brand preference data from
16 those people, you're certain that it wouldn't
17 change your result?
18 A. If anything, we'd have probably an even higher
19 percentage of children smoking Camels.
20 Q. So it would change your result?
21 A. It would make it more damning for your
22 company.
23 Q. It would change your result? I'm interested
24 not only in what damns and doesn't damn RJR

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1 Reynolds, I'm interested in what serves the
2 scientific truth and integrity, and whether it
3 helps us or --
4 MS. CUNEO: Objection. Objection.
5 Q. So I'm not trying to --
6 MS. CUNEO: If you'd like to testify at
7 trial, we'll be glad to call you.
8 Q. I don't have a motivation of bias. I'm just
9 trying to find out if you did this right.
10 MS. CUNEO: Objection.
11 Q. And what you're telling me is you didn't do it
12 right because if you had done it like you
13 reported it it would be different. Yes or
14 no? Tell me.
15 A. I'm not saying I did anything wrong.
16 Q. I wouldn't expect that. But what you did
17 report at Page 3150 is "the previous week,"
18 the words "the previous week," and what you're
19 telling me is the words "the previous month"
20 should have been in there?
21 A. That's correct.
22 Q. Had the words "the previous month" been in
23 there or had the analysis been done on
24 previous week, it would have been different?

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http://legacy.library.ucsf.edu/tid/ojr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 I don't care if it's better or worse. It
2 doesn't make any difference to me. It would
3 have been different than what you reported?
4 A. It would not have been measureably different.
5 Q. But it would have been different?
6 MS. CUNEO: Objection. Asking the
7 witness to speculate.
8 Q. How different, if you know?
9 A. I would say it would make absolutely no
10 difference.
11 Q. You base that statement on what, intuition?
12 A. No.
13 Q. Analysis?
14 A. One thing, the number of kids who were in that
15 category are probably very small. The other
16 thing is that the more kids smoke the more
17 likely they are to buy their own brand and
18 have a choice of which brands they smoke.
19 Whereas, if a kid's only smoking one cigarette
20 a month, he's probably stealing them from his
21 parents and doesn't have any choice of
22 favorite brand he would smoke. Finally is
23 that the definition of which kids you call
24 smokers and which kids you don't call smokers

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http://legacy.library.ucsf.edu/tid/ojr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 varies from one study to the other. It's very
2 arbitrary.
3 Q. We're not talking about other studies,
4 Doctor. I'm only interested in yours, that's
5 all.
6 MS. CUNEO: Let the witness testify.
7 MR. DONAHUE: He's not answering the
8 question. He's making a speech. He's got
9 himself in a difficult position, and he's
10 trying to get out by making a speech. I don't
11 want to listen to this. I'll ask him a
12 question. He can answer me. If he wants to
13 make a speech, let Ed ask him some questions.
14 MR. GREER: I don't want to solicit
15 speeches from anyone.
16 Q. Doctor, let's go back to the fact that 29
17 percent of the 1,055 usable responses equal
18 306 students who, quote, and I'm reading from
19 the top center of your article, Page 3151,
20 "reported some cigarette use." And return to
21 the issue of why you didn't tell the
22 scientific world that 86 out of 306 students
23 expressed a brand preference for Camel and you
24 only told the scientific world that 86 out of

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1 261 students expressed a brand preference for
2 Camel. Is that clearly stated?
3 A. Is that a question?
4 Q. Yes. Why did you do that? Why didn't you
5 report in your article that 86 out of 306
6 children who reported some current cigarette
7 use expressed a brand preference for Camel?
8 Why didn't you tell us that? Not me. Why
9 didn't you tell the scientific world that?
10 A. Well, what we told them was that of 261
11 children who provided us with information on
12 their brand preference 86 stated they smoke
13 Camels. For all we know, the other 45
14 children all smoke Camel. We can't speculate
15 on what they smoke.
16 Q. So you said they didn't express a brand
17 preference, is that correct, that's why you
18 didn't report it?
19 A. That's correct. They didn't fill out the
20 question.
21 Q. Use my calculator if you have a measure of
22 confidence in it, if you would, please,
23 Doctor, and tell us what percent 86 is of 306?
24 A. There's no reason to do such a calculation.

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Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

Q. Indulge me, please. You're getting paid $250 an hour. Indulge me.

A. I'll do it by hand in that case. It rounds off to 33 percent. I think I just did the same calculation.

Q. I've got to get you away from your calculation to the one that the data showed here. What percentage of 306 is 86?

A. 28 percent.

Q. So that if you had included the 45 people in the study that you didn't include -- by people I mean children who reported some current cigarette use but didn't express a brand preference -- then what you would have reported to the scientific world is that of children who reported some current cigarette use 28 percent expressed a brand preference for Camel and the remaining either expressed a brand preference for something else or expressed no brand preference, "parens," but they could have all been smokers, "parens," right?

A. That's correct.

Q. Why didn't you do that?

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1 A. Because when you have a questionnaire survey,
2 there are always some students who leave one
3 particular question blank or another
4 particular question blank.
5 Q. But by your report, by the way you wrote this
6 article you were purposely leaving out
7 children who were smokers but didn't express a
8 brand preference; you did it on purpose,
9 didn't you?
10 A. I can only analyze the data I have. I have
11 brand preference data on 261 children.
12 Q. You had 45 children who told you that they
13 smoked but didn't express a brand preference?
14 A. That's correct. We don't have any data on
15 those.
16 Q. Is this in here?
17 A. Yes.
18 Q. The fact that you -- where do you make the
19 narrative statement that we have a total of
20 306 students, 45 of which didn't express any
21 brand preference statement? Did you report on
22 that?
23 A. No, but you figured it out from the published
24 report.

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http://legacy.library.ucsf.edu/tid/ejr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 Q. So all you were trying to convey to the
2 scientific world is that from among the
3 smoking students who in fact expressed a brand
4 preference, although there were some that did
5 not, 32.8 percent expressed a preference for
6 Camel, correct?
7 A. That's correct.
8 Q. That is not supported, is it, Doctor, for the
9 proposition that all students, children,
10 prefer Camel at the rate of 32.8 percent, is
11 it? That's only support for the proposition
12 that all children who would express a brand
13 preference would express a brand preference
14 for Camel. You understand the difference?
15 A. I think it's scientifically impossible to know
16 what the brand prefrence is of children who
17 refuse to tell you.
18 Q. So there is a category of no preference?
19 A. So we are left with the option of determining
20 the brand preference of children who tell us
21 what their brand preferences are.
22 Q. For example, let's change categories for a
23 minute. If the Ivory soap people want to know
24 what percentage of people use their soap, they

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1 can commission a survey, right?
2 A. That's correct.
3 Q. They can go out and ask a whole bunch of
4 people, a representative sample of the
5 population, what kind of soap do you use,
6 right, and a bunch of them could say Ivory and
7 a bunch of them could say Palmolive and a
8 bunch of them could say a different kind and
9 some of them could say I really don't care, I
10 don't have a preference, right?
11 A. That's correct.
12 Q. When the Ivory soap people wanted to know what
13 percentage of the people who use soap use
14 their soap, wouldn't they want to include
15 people who expressed no preference to get an
16 accurate number?
17 MR. GREER: Objection. Calls for
18 speculation to the motives of the Ivory soap
19 population.
20 Q. Another factor of this litigation life,
21 Doctor, I'm sure you picked up on it already,
22 is whenever I ask you a question that's
23 difficult he'll jump in or she'll jump in.
24 MR. GREER: You should be glad to have me

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1 jump in then.
2 Q. Let's get back to it, Doctor. In order for
3 the Ivory soap people to know the market
4 share, they would have to include people who
5 expressed no preference, wouldn't they?
6 A. No.
7 Q. Why?
8 A. Because it would be inaccurate because some of
9 those who express no preference actually are
10 buying Ivory soap.
11 Q. But how do you know that? How do you know
12 what percentage of those people?
13 A. You don't know. You might assume that, and
14 this will be assumption, that the breakdown of
15 brand preference among those who do not tell
16 you what their brand preference is is very
17 similar to that among those who do tell you
18 what it is.
19 Q. You can speculate?
20 A. That's speculation.
21 Q. Or you can assume it?
22 A. If 33 percent of kids who tell us what they
23 smoke smoke Camel, it would be reasonable to
24 speculate that 33 percent of those students

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Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 who do not tell us what they're smoking also
2 smoke Camel.
3 Q. Is the term "reasonable speculation" one that
4 you're comfortable with as a scientist when
5 you're trying to analyze empirical data that
6 is as widely published as your data has been
7 published, Doctor? Is that a comfortable term
8 to you, "reasonable speculation"?
9 A. No, because that's not what we did. We did
10 not assume that those people who did not
11 express a brand preference smoke Camel. We
12 simply reported what the subjects told us --
13 Q. You reported --
14 A. -- and made no comment or any speculation on
15 what the subjects who did not provide us with
16 their brand preference were smoking.
17 Q. You reported, Doctor, did you not, that 32.8
18 percent of the smoking children who expressed
19 a brand preference expressed a brand
20 preference for Camel, correct?
21 A. That's correct.
22 Q. You did not report that 32.8 percent of
23 children who smoked expressed a brand
24 preference for children -- for Camel, did

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1 you? Or did you?

2 MR. GREER: Could I have that question

3 back, please.

4 (Previous question read by the

5 stenographer)

6 MR. GREER: Wait a second.

7 MR. DONAHUE: I don't think that that was

8 written down like I intended to ask it.

9 Strike that question. Can I ask another one?

10 MR. GREER: Sure. Ask whatever question

11 you want.

12 Q. Dr. DiFranza, at the bottom center of

13 Page 3151 there appears in your article the

14 statement "The proportion of smokers under 18

15 years of age who choose Camels has risen from

16 0.5 percent to 32.8 percent." That appears

17 there, does it not?

18 A. That's true.

19 Q. On that same page in the first column

20 left-hand side, the last paragraph reads, "The

21 brand preference data revealed a dramatic

22 reversal in the market segment pattern that

23 existed prior to Camel's Old Joe cartoon

24 character campaign. Camel was given as the

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Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 preferred brand by 32.8 percent of children up
2 to the age of 18 years who smoked," -- there's
3 more in that sentence, but that's all I want
4 to direct your attention to.
5 A. I see those.
6 Q. Doctor, when you calculated or when you
7 arrived at your 32.8 percent figure, you
8 considered responses of children who smoke and
9 analyzed responses of children who smoke only
10 if they expressed a brand preference, is that
11 correct?
12 A. That's correct.
13 Q. If they did not express a brand preference,
14 you didn't consider it, is that correct?
15 A. We had no data on those who did not provide us
16 with the data.
17 Q. They would be children who smoked who didn't
18 express a brand preference. That's data, is
19 it not?
20 A. You could count how many there are, but our
21 statement here says "the brand preference
22 data," so we could only report on those
23 students who provided us data on their brand
24 preference.

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http://legacy.library.ucsf.edu/tid/ojr07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 Q. So from your perspective when you use the
2 term, and when you discuss the concept of
3 brand preference, if somebody didn't prefer a
4 brand they are not to be included, is that
5 correct?
6 A. That's correct.
7 Q. You've read a lot of the popular press reports
8 from your article, have you not?
9 A. I have.
10 Q. You are fully well aware, Dr. DiFranza, are
11 you not, of the fact that the press has
12 reported that your article concludes and
13 supports the proposition that 32.8 percent of
14 the underage, under 18 market now smoke Camel,
15 isn't that right?
16 A. That's correct.
17 Q. But, yet, your data only reports on those
18 under 18 who expressed a brand preference and
19 ignores, does not consider and does not report
20 on, those people under 18 who smoke who did
21 not report a brand preference, is that
22 correct?
23 A. We don't ignore them, but that's correct.
24 Q. You don't report on them, is that correct?

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1 A. That's correct.
2 Q. As we have done our arithmetic here earlier,
3 if you assume -- I'm not saying it's a
4 rational assumption or a supportable
5 presumption because I just don't know. It's
6 the grossest of speculation on my part, and
7 I'll admit that. If you assume that all of
8 those 45 people in fact don't smoke Camel,
9 then the Camel brand usage number for underage
10 children is 28 percent, correct?
11 A. Based on that assumption.
12 Q. If you assume that every one of them does
13 smoke Camel and you add 45 to 86 and divide it
14 by 306, you come up with a different number
15 which clearly would be higher than 32.8
16 percent, is that correct?
17 A. That's correct.
18 Q. Neither number, though, is 32.8 percent, is
19 that correct?
20 A. That's correct.
21 Q. And your conclusion, widely reported in the
22 press, that as a result of the Old Joe
23 advertising campaign 32.8 percent of underage
24 smokers smoke Camel can be accurate and

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Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 supported only if one concludes that those who
2 did not express a brand preference, in fact,
3 smoke using the same rate of brand preference
4 as those who do choose one, is that correct?
5 A. That's correct.
6 Q. Doctor, if it were your intention to tell the
7 scientific world what percentage of smokers
8 smoke Camel based on your evidence, why didn't
9 you in your narration tell the scientific
10 world that you left out of your analysis
11 people who didn't choose Camel?
12 MS. CUNEO: Objection.
13 MR. DONAHUE: Why is it objectionable?
14 I'm asking him why he did something. Is it a
15 bad question because it hurts your position,
16 or is it really a bad question? I don't
17 understand. Why is it a bad question?
18 MS. CUNEO: Why don't you read the rules
19 of evidence. I think there are assumptions in
20 there.
21 MR. DONAHUE: That he left something
22 out?
23 Q. Go ahead, Doctor. I'm sorry. Smetimes I
24 can't avoid rising to the bait. I'll try not

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1 to do it in the future.

2 MS. CUNEO: You've risen to the bait

3 quite numerously.

4 A. Nothing was left out of the report. The data

5 is there for anybody to analyze as you've

6 done. There's no attempt to hide it. But

7 when publishing in a medical journal, we are

8 quite limited as to space. I think it's quite

9 obvious to scientists that you only analyze

10 the data on the people who answer the

11 questions. And I think that's fairly stated

12 when it says, "the brand preference data

13 revealed a dramatic reversal."

14 Q. Doctor, refer to Page 76 of Exhibit 3 which I

15 think we've earlier identified as the two-page

16 final questionnaire that was addressed to the

17 children. You see there Question 17 says,

18 "How often do you smoke"? And one of the

19 choices is "I don't," correct?

20 A. Correct.

21 Q. You see Line 20 that says, "If you smoke,

22 what's your favorite brand"? And someone can

23 fill in the name of a brand?

24 A. That's correct.

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http://legacy.library.ucsf.edu/tid/ojr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 Q. The issue we've been beating around here for
2 the past half an hour. Exhibit No. 9 is a
3 computer printout that you produced to us,
4 correct?
5 A. That's correct.
6 Q. Do you know, Doctor, how many of the 261
7 respondents that identified something as a
8 favorite brand also answered Question 17
9 "I don't"?
10 A. No, I don't.
11 Q. That information can be obtained from the data
12 that you provided to us, can it not?
13 A. Yes.
14 Q. So it's possible for someone who knows how to
15 use computers and who can encode this
16 information into a computer program to
17 determine how many students who told you they
18 had a favorite brand, whatever it was, also in
19 response to Question 17 said "I don't smoke"?
20 A. They could do that.
21 Q. Have you ever done that analysis?
22 A. We limited our analysis of favorite brand to
23 smokers. We selected those students who
24 smoked and then looked at the favorite brand

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1 data.
2 Q. How did you decide who was smoking?
3 A. In the study we considered anybody who gave a
4 positive response to either Question 16 or
5 Question 17 to be a smoker. We included both
6 of those questions exactly for that purpose so
7 that we could have two chances of capturing
8 the smokers.
9 Q. Twice as good a chance of getting smokers?
10 A. Some kids are smoking once a week, but when
11 you ask them if they're a smoker they don't
12 think of themselves as a smoker. So that's
13 why we ask the question two different ways.
14 Q. No. 17 is a more definite way of asking the
15 question?
16 A. I don't know if one is more definite than the
17 other.
18 Q. Question 17 asks the respondents to choose one
19 from among four categories, correct?
20 A. That's correct.
21 Q. One of which is I don't smoke, and the other
22 three are about once a week, once a month, or
23 almost every day, correct?
24 A. That's correct.

http://legacy.library.ucsf.edu/tid/ejr07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 Q. Again, 20 affords an opportunity for a
2 respondent to tell you what their brand
3 preference is, is that correct?
4 A. That's correct.
5 Q. Would it surprise you to find, Doctor, that a
6 number of the respondents who identified for
7 you in response to 20 a favorite brand also
8 indicated in response to 17 that they didn't
9 smoke?
10 A. Yeah.
11 Q. It wouldn't surprise you?
12 A. It wouldn't surprise me if that happened.
13 Q. In order to cross-validate your study,
14 wouldn't it be necessary to go back and look
15 and see if that happened?
16 A. No, because if they smoked in the last week,
17 they could still answer that they don't
18 smoke. This was the procedure we set up
19 before we had the data, and we decided that if
20 students answered to either 16 or 17 that they
21 had smoked within the last week or that they
22 indicated a frequency of smoking that they
23 would be included as smokers.
24 Q. So as far as you're concerned, if someone

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http://legacy.library.ucsf.edu/tid/ejr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 answers Question 17 which reads "How often do
2 you smoke?" by indicating "I don't," as long
3 as they had answered Question 16 "yes" then
4 for your purposes it's rational and valid to
5 assume they're smokers, and you can accept and
6 analyze their response to No. 20?
7 A. Yes.
8 Q. You base that on what?
9 A. Because sometimes children do not consider
10 themselves to be smokers despite the fact that
11 they are smoking.
12 Q. So your intended purpose here is to get as
13 many of them as you could?
14 A. We included as smokers both children who
15 identified themselves as smokers and those who
16 were actually smoking.
17 Q. After you obtained brand preference data, you
18 calculated Camel adult share, is that correct?
19 A. Can you ask that question again?
20 Q. After you obtained preference data, you
21 calculated Camel adult share?
22 A. That's correct.
23 Q. Page 3151 top right-hand column reads, "We
24 compute that Camel's adult market share is

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1 actually 3.4 percent," correct?
2 A. That's correct.
3 Q. Earlier in the article you recognized,
4 Page 3150, Doctor, on the left-hand column
5 just above the word "materials," you make the
6 statement "Since adult brand preferences are
7 available from national surveys" -- so you
8 recognize the fact in your article that adult
9 brand preferences are available from national
10 surveys, is that correct?
11 A. That's correct.
12 Q. In Footnote 20 to your article you, in fact,
13 refer to one of those adult brand preference
14 surveys, is that correct?
15 A. That's correct.
16 Q. CDC, that's a government organization, the
17 Center for Disease Control?
18 A. That's correct.
19 Q. That CDC study showed the Camel adult
20 preference number was 4.0, is that correct?
21 A. I don't have that in front of me.
22 Q. I somehow thought, Doctor, you wouldn't.
23 (Exhibit No. 14, Document, marked for
24 Identification)

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http://legacy.library.ucsf.edu/tid/ojr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 Q. I've asked that the court reporter identify or
2 mark Exhibit 14, and I ask you to refer to it,
3 and I'm particularly interested in the second
4 page, the column at the top, which reads
5 "Overall" and shows under the column marked
6 Camel 4.0. But of course you can look at
7 whatever you want to look at and tell me, is
8 that not a copy of the reference that you
9 referred to in your article at Footnote 20?
10 A. It is.
11 Q. Pardon me?
12 A. It is.
13 Q. So you make the statement in your article that
14 adult brand preferences are available from
15 national surveys, and you, in fact, refer to a
16 national survey, is that correct?
17 A. That's correct.
18 Q. Yet, you've for some reason concluded that
19 it's necessary to calculate adult brand share,
20 is that correct?
21 A. That's correct.
22 Q. Your calculation indicated that the adult
23 market share was actually, to use your term,
24 3.4 percent?

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Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 A. That's correct.
2 Q. Again, according to your assumptions, adults
3 smoked 96.7 percent of all cigarettes, is that
4 correct?
5 A. That's correct.
6 Q. Children 3.3 percent?
7 A. That's correct.
8 Q. What other adult brand preference, that you
9 referred to at Page 3150, survey are you aware
10 of?
11 A. The Maxwell report gives brand market share.
12 Q. Does it give adult market share?
13 A. No. It gives brand market share. That's why
14 we took that more recent brand market share.
15 The CDC study that you just quoted on adult
16 market share was from 1986 which was a full
17 two years before the Old Joe Camel ads came
18 out.
19 Q. What's the significance of that?
20 A. Well, it doesn't give us an adult market share
21 for Camel in 1990 which is what we were
22 looking for.
23 Q. Is there something that does?
24 A. No. That's why we had to calculate it. What

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1 we did do was we took the Maxwell report which
2 gave 4.4 percent as Camel's market share, and
3 then we did a computation to determine of that
4 market share how many of those Camels were
5 smoked by adults and how many were smoked by
6 kids.
7 Q. You are then not aware of any market share
8 data for adults that would have been gathered
9 about the same time you gathered your
10 evidence, is that correct?
11 A. I'm sure --
12 Q. There are. There's a lot of them. I'm just
13 wondering if you're aware of any of them.
14 A. I know the Maxwell report gives you brand
15 market share but not adult brand preference.
16 Q. I'm not looking for adult brand. Are you
17 aware of any survey that would give adult
18 brand preference or market share taken about
19 the same time you collected your data?
20 A. I'm not aware of any, no.
21 Q. Are you familiar with the A.C. Nielsen
22 Company?
23 A. I've heard of Nielsen.
24 Q. Would it surprise you to learn that the

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1 tobacco companies, in fact, track or keep
2 track of their adult market share? Would it
3 be a surprise to you?
4 A. It would not be a surprise. I would certainly
5 not have access to that.
6 Q. Did you make an attempt to review this
7 literature, survey literature, to determine
8 whether there were any brand preference
9 surveys available to you that would indicate
10 adult brand preferences for Camel brand at
11 about the same time you collected your data?
12 MR. GREER: Are you now stating that
13 you're going to make available all that data
14 in your possession for us to review? Because
15 if so, we'd be glad to adjourn until such time
16 as we have an opportunity to review it. If
17 not, then why don't we go on to the next
18 item.
19 MR. DONAHUE: I'm going on. I'm going on
20 with this item.
21 MR. GREER: No, to the succeeding item.
22 Why don't you skip over this item until such
23 time as you give us the data about which you
24 wish my client to comment.

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http://legacy.library.ucsf.edu/tid/ojr07a00/pdf http://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 MR. DONAHUE: I get to ask the questions,
2 and then you get to either tell him not to
3 answer, in which case we'll go see the judge,
4 or he answers it and then we go forward.
5 MR. WOOD: What are the grounds of your
6 objection, Ed?
7 MS. CUNEO: Just how many questions do we
8 have here?
9 MR. DONAHUE: Let's go back to mine.
10 Q. Doctor, all I'm interested in is whether or
11 not when you prepared your article you sought
12 to obtain, from whatever source available to
13 you, adult market share data of Camel brand
14 cigarettes that would have been taken about
15 the same time you did your survey. That's
16 all. Did you or did you not?
17 A. Yes.
18 Q. What did you find out?
19 A. We didn't find anything.
20 Q. How did you try to find it?
21 A. We have a network of researchers, and we
22 communicate, and I remember talking to --
23 actually, I remember talking to the people at
24 the Office on Smoking and Health and asking

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1 them if they had any recent data. I believe
2 they did, but they had not analyzed it.
3 I don't remember now whether that was on
4 children or adults, but in any case my article
5 went to press before they were able to provide
6 me with any of that information. Of course, I
7 would have no access to any surveys conducted
8 by the tobacco industry for their own
9 proprietary use.
10 Q. Exhibit No. --
11 MR. GREER: Nefarious proprietary use.
12 Q. Exhibit No. 10, Doctor, is from your
13 materials, and is in fact, is it not, a
14 calculation that shows how you calculated
15 adult market share?
16 A. That's correct.
17 Q. I think that the same information, just for
18 your reference if you'd like to refer, appears
19 generally at the bottom of Page 78 in the
20 materials that you did produce, same kind of
21 formula, is that correct?
22 A. That's correct.
23 Q. Both of those exhibits, Page 78 of Exhibit 3
24 and Exhibit 10, are in your handwriting, is

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1 that correct?
2 A. That's correct.
3 Q. And are your calculations using a relatively
4 simple algebraic formula, is that correct?
5 A. That's correct.
6 Q. In which you identify as the unknown, adult
7 market share, correct?
8 A. Correct.
9 Q. You identify as knowns, underage market share
10 as 32.8 percent, is that correct?
11 A. That's correct.
12 Q. Referring again to Exhibit No. 14, and
13 understanding the date, it shows Camel brand
14 market share among adults of 4.0, is that
15 correct?
16 A. That's correct.
17 Q. If you rather than assuming as a known youth
18 market share, you rather assumed as a known
19 adult market share as 4.0 and did your
20 calculation, you would expect the 32.8 percent
21 figure to go down, wouldn't you?
22 A. Well, there would be -- that would be
23 ludicrous to do that calculation.
24 Q. Why?

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1 A. Because we wanted to know what's going on
2 after the R.J. Reynolds Company began using
3 cartoons to advertise their Camel brand, and
4 this adult brand preference survey was taken a
5 full two years before the advertising campaign
6 of interest had even been initiated.
7 Q. Is it your position then, Doctor, that based
8 upon the empiral data that you gathered you
9 can conclude that as a result of the Camel
10 brand advertising campaign there's a
11 substantial difference of the adult share of
12 Camel? And, if so, how do you conclude that?
13 A. A substantial difference from what?
14 Q. From 4.0.
15 A. Yes. We believe there's been a drop in the
16 proportion of Camel smokers among adults.
17 Q. Who's we?
18 A. The office of the study.
19 Q. That includes you?
20 A. Yes.
21 Q. So you believe there's been a drop in the
22 proportion of Camel smokers, correct?
23 A. Among adults.
24 Q. If you're wrong, your formula is wrong,

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1 correct?

2 MR. GREER: Objection to the form of the

3 question. I don't think that question is

4 meaningful.

5 Q. Is it meaningful to you, Doctor?

6 A. Why don't you ask it again.

7 Q. My understanding of your article that appeared

8 in the Journal of the American Medical

9 Association is that -- and it's entitled --

10 "RJR Nabisco's cartoon Camel promotes Camel

11 cigarettes to children," right?

12 A. That's correct.

13 Q. My understanding is, in reading from your

14 abstract, reading from the conclusion in the

15 abstract, "Old Joe Camel cartoon

16 advertisements are far more successful at

17 marketing Camel cigarettes to children than to

18 adults. This finding is consistent with

19 tobacco industry documents that indicate that

20 a major function of tobacco advertising is to

21 promote and maintain tobacco addiction among

22 children." I read that right, didn't I?

23 A. That's correct.

24 Q. There's nothing in here about the effects of

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1 RJR Nabisco's cartoon Camel on adult smokers,
2 is there?
3 A. Well, this suggests that there had actually
4 been a decline, but that wasn't the topic of
5 the report.
6 Q. What suggests there had been a decline, your
7 calculation?
8 A. Well, we'll assume that if, as the company is
9 reporting, the sale of Camels were flat or
10 they hadn't increased significantly and then
11 you have a huge boost in the number of kids
12 who are smoking Camel, then that means you'd
13 have a compensatory decline in the number of
14 adults who are smoking Camels.
15 Q. 96.7 percent of cigarette use is among adults
16 and 3.3 percent among children, is that
17 correct?
18 A. That's correct.
19 Q. Doctor, would it surprise you to hear that a
20 half point swing in adult market share can
21 translate into about a 14 or 15 point swing in
22 child market share? That makes sense to you,
23 doesn't it?
24 A. That sounds about right.

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1 Q. Sounds about right, doesn't it?
2 A. Hm-hm.
3 Q. Other than making the assumption that if more
4 children smoke Camels therefore fewer adults
5 must be smoking Camels, is there anything
6 about your study and the data you gathered or
7 about your article that would support the
8 accuracy of the proposition that Camel brand
9 adult market share had gone down from 4.0 to
10 3.4 percent?
11 A. Our conclusion was based completely on this
12 calculation based on the number of kids who
13 stated a brand preference for Camel.
14 Q. So your calculation, assuming the accuracy of
15 the 32.8 percent figure, is the basis upon
16 which you conclude that adult market share
17 actually went down from 4 to 3.4 percent,
18 correct?
19 A. Based on the magnitude of that, yes.
20 Q. Doctor, returning to the question I had a few
21 moments ago, to the calculation which you
22 characterize as ludicrous -- I don't think
23 it's ludicrous, but we'll let somebody else
24 decide. We'll agree to disagree on the

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1 ludicrousocity of the question.
2 A. Fine.
3 Q. If you rather than assumed 32.8 as an accurate
4 measure of underage market share -- instead of
5 that you put an X as an unknown in there?
6 A. Yes.
7 Q. -- and you put in instead of an X or unknown
8 4.0 as the adult market share, which is the
9 market share reported in the Exhibit No. 14
10 that you referred to in your article, what
11 then do you calculate the underage market
12 share to be? Before you do that --
13 MR. GREER: Could I suggest that after we
14 do that it would be a convenient time for us
15 to take a break?
16 (There was a discussion off the record)
17 MR. DONAHUE: I'll hand you a chart which
18 I'll ask be marked as Exhibit No. 15.
19 (Exhibit No. 15, Chart, marked for
20 Identification).
21 Q. Let me hand you Exhibit 15. You can keep that
22 one. Rather than worrying about the X/Y
23 charts on the front page, I'd suggest to you
24 that you go to Page 1 at the bottom, Entry

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1 No. 43. You see there this is a
2 computer-generated chart using your formula.
3 You recognize that, don't you? Any time you
4 want to check the accuracy of it, we can do it
5 with the computer.
6 But at the bottom, Entry No. 43, we have
7 under the Camel share of underage -- No. 42,
8 excuse me -- Camel share of underage, 32.8.
9 That's the number you calculated and recorded,
10 is that correct?
11 A. That's correct.
12 Q. Again, referring to Exhibit No. 9 which
13 contains your calculation -- Exhibit No. 9?
14 A. Yes.
15 Q. You calculated adult market share 3.43, is
16 that correct?
17 A. That's correct.
18 Q. That's what's shown in this chart, right?
19 A. Yes.
20 Q. Again, without necessarily asking you to vouch
21 for the accuracy of the numbers, although if
22 you significantly have a measure of concern we
23 can use the calculator and you can verify
24 them, I'd ask you to turn to Page 4 and you'll

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1 see there two entries there, No. 125 and 126.
2 A. Yes.
3 Q. Both of which indicate a Camel share of adult
4 market at 4, correct?
5 A. That's correct.
6 Q. What is the Camel share of underage market if
7 one assumes, using your calculation and the
8 other assumptions remain constant, what then
9 is the calculated share of Camel share of
10 underage?
11 A. It would be 16 to 16.2.
12 Q. That's just simply using your formula, is that
13 correct?
14 A. That's correct.
15 Q. So, therefore, it's an accurate statement to
16 make, is it not, Doctor, that using your
17 formula but assuming that the Camel adult
18 market share of 4.0 which is contained in your
19 Footnote 20, is accurate -- I'm not saying
20 it's accurate but to assume it's accurate --
21 then the youth share is either 16 or 16.2, is
22 that correct?
23 MS. CUNEO: I'm going to object to the
24 use of this document. I have no idea what it

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1 is or where it comes from or where these
2 numbers come from.
3 MR. DONAHUE: It comes from --
4 MS. CUNEO: Let me finish my objection.
5 My understanding is that this was not produced
6 by Dr. DiFranza.
7 MR. DONAHUE: Correct.
8 MS. CUNEO: You may continue.
9 Q. The numbers are the numbers, is that correct,
10 Doctor?
11 MS. CUNEO: Objection.
12 Q. If you had 4.0 market share for adults
13 according to your formula, the calculated
14 share for underage would be 16 or 16.2,
15 correct?
16 A. The problem with this exercise is that you're
17 assuming that the adult market share and the
18 share of the market -- strike that.
19 Q. Assuming share of market remains constant at
20 4.4, that was your share of the market, wasn't
21 it?
22 A. But this share of the market, you took 1986
23 data for share of adults and 1992 data and '91
24 data for share of the market so --

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1 Q. I understand that, Doctor. I fully well
2 understand that.
3 A. For this to be valid all the data has to be
4 collected at the same time.
5 Q. Or, or the adult market share of 4.0 has to be
6 accurate as of the time you collected your
7 data, right?
8 A. The trouble with even that assumption is that
9 because of the great weight in this equation
10 to the proportion of adults who are smoking,
11 because they make up 96.7 percent of the
12 market, very minor fluctuations in the adult
13 market share would result in extreme swings.
14 Q. For the underage?
15 A. For the underage.
16 Q. I made that point earlier when I asked you
17 would you be surprised to find that a half
18 point market share swing in adults translated
19 into a 14 point share for kids, and you said
20 that wouldn't surprise you at all. I thought
21 we already agreed on that.
22 A. That's right. It would be about 30 times more
23 reliable to predict adult market share based
24 on the children's market shares than it would

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1 be to do the reverse.
2 Q. Assuming that the children's market share is
3 accurate?
4 A. In other words, your error or any error in the
5 measurement of the adult market share would be
6 multiplied by a factor of about 30 when one
7 translated that into the children's market
8 share.
9 Q. I'm sure you understand the concept of
10 leverage. I understand all that. We're
11 using your formula, and we're using your
12 assumptions --
13 A. Therefore I would say that this --
14 Q. Is ludicrous?
15 A. Is ludicrous, right.
16 Q. I understand that you think it's ludicrous.
17 A. I said it was ludicrous because the data was
18 taken in a different time era than our study
19 was conducted, but now I'm also adding
20 ludicrous because of what you call the
21 leverage principle, that very small errors in
22 the measurement of the adult market share
23 would magnify by 30 fold into errors in the --
24 Q. I understand all that. I agree with it. My

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1 point, however, is just simply to ask you,
2 Doctor, that if you assumed using your
3 calculation and your other assumptions that
4 the adult market share when you gathered your
5 data on children was 4 instead of your
6 calculated 3.43, then the calculated -- I'm
7 not saying you have to agree with me; it's
8 right -- but the calculated share for underage
9 would be between 16 and 16.2. That's all I'm
10 asking. That's what the numbers show. Is
11 that correct?
12 A. If you're asking me is the arithmetic correct,
13 the use of the equation is in error.
14 Q. Your opinion is the use of the equation is in
15 error?
16 A. That's right.
17 Q. You also collected data, did you not, on
18 adults in Massachusetts?
19 A. We did.
20 Q. Brand preference data on adults?
21 A. We did.
22 Q. Your collection indicated to you, as reported
23 by you at the bottom left-hand on Page 3151,
24 that 8.7 percent of those 21 years of age and

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1 over expressed a preference for Camel
2 cigarettes, is that correct?
3 A. That's correct.
4 Q. You recognize pretty quickly that those
5 figures were significantly higher than the
6 national market share for Camel which you had
7 taken from the Maxwell reports as 4.4 percent,
8 is that correct?
9 A. That's correct.
10 Q. Those are the Maxwell reports that were
11 reported in the Ad Age magazine, correct?
12 A. That's correct.
13 Q. So you then say that suggests that
14 Massachusetts adults may be more familiar with
15 the Old Joe Camel campaign than adults in
16 general, correct?
17 A. That's correct.
18 Q. What's the basis of that suggestion? Have you
19 counted billboards? Are there more billboards
20 in Massachusetts than there are in the rest of
21 the nation?
22 A. No. That was an assumption.
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23 Q. An assumption based on what?
24 A. It says that they may be. We did not make an

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1 affirmative statement. We were hypothesizing
2 why that might be.
3 Q. Your adult share data was more than twice
4 higher than the national market share,
5 correct?
6 A. That's correct.
7 Q. You had to come up with some reason for it,
8 and your suggestion was maybe they were more
9 familiar than other adults, correct?
10 A. Yes. And there are other possibilities.
11 Q. Let's run the first one down first, and then
12 we'll visit with the other ones. Look at the
13 chart at the top of the page and tell me among
14 school children which is the area of the
15 country which has the lowest percentage
16 preference for Camel brand cigarettes among
17 school children?
18 A. It would have been Massachusetts.
19 Q. 21.8 percent, correct?
20 A. That's correct.
21 Q. Is there something about the awareness of the
22 Camel advertising campaign that causes the
23 adult to be more familiar with the Old Joe
24 Camel campaign and therefore results in more

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1 than twice the number of them preferring Camel
2 brand, but yet the smallest percent of all
3 school children that preferred Camel were in
4 Massachusetts? I don't understand that. Do
5 you understand that?
6 A. No.
7 Q. Make any sense to you?
8 A. Well, we do know that Massachusetts students
9 had the highest recognition for the ads.
10 Q. Wait a minute. I'm not talking about
11 recognition. I'm talking about smoking Camel,
12 preference. Lets keep talking about apples
13 and apples here, Doctor, preference.
14 A. There are many factors in which brands --
15 we're talking about very minor variations.
16 Q. Let's talk about one of the factors, okay.
17 A. One factor may be --
18 Q. I had one in mind. Let's hear yours first.
19 A. One factor may be the exposure to the ads.
20 Another factor might be the ratio makeup of
21 the communities involved.
22 Q. One group may not be accurately representative
23 of the country as a whole, and the other one
24 might be; is that what you're saying?

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A. Brand preference varies from high school to high school more so than among adults, for instance. So you could have two high schools in neighboring towns, and one school might be a Marlboro school and the next school might be a Camel school. But I don't think you see that sharp a demarcation with brand preference among adults.

Q. There could be that sharp a brand preference demarcation among kids? Could be?

A. Could be.

Q. In fact, there was -- what school did you go out and visit for Massachusetts?

A. We have not revealed the names of the schools.

Q. I bet you don't want to tell me either, do you?

A. That's correct.

Q. I won't press you on that, Doctor. But there is a school that you went to visit, correct?

A. That's correct.

Q. If that was a Camel school, then that would significantly skew your numbers or significantly interfere with an objective scientist's ability to say that the numbers

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1 gathered from that school are accurately
2 representative of students throughout the
3 country, wouldn't it?
4 A. It would, yes.
5 Q. You don't have any reason to know whether
6 yours was a Marlboro school, do you?
7 A. No. That's why we took schools from five
8 different regions of the country.
9 Q. And the belief is that if you took schools
10 from five different regions of the country,
11 those differences would smooth out and not be
12 of statistical significance, correct?
13 A. Exactly.
14 Q. Based on what? What kind of statistical
15 analysis did you do to support that
16 conclusion, Doctor?
17 A. It's called random selection, that you select
18 your subjects at random. So we do not measure
19 any brand preference before we went into these
20 schools, and we just selected at random five
21 schools from five regions of the country, and
22 that is the way scientific studies are
23 conducted.
24 Q. You didn't randomly select subjects; you

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1 randomly selected schools?
2 A. Right.
3 Q. You don't mean to tell me that that's a random
4 selection of subjects, is it?
5 A. It's even more random selection of subjects
6 since we don't have any knowledge of which
7 subjects are in which schools.
8 Q. Any other factors you think might be at play
9 here that would cause collected data among
10 Massachusetts adults to show that more than
11 twice as many of the people surveyed by you
12 indicated a preference for Camel than the
13 national market share for Camel?
14 A. There is another factor which we took into
15 serious consideration, was whether showing
16 Camel ads to these subjects before asking
17 their brand preference might have caused them
18 to be more likely to answer that Camel was
19 their favorite brand.
20 Q. You've hit upon the one that I wanted to ask
21 you about.
22 A. What a coincidence.
23 Q. When you gathered the data from the students,
24 they were all in a classroom setting, and

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1 after giving you certain information they were
2 then shown one masked Camel ad which appears
3 at the top left page of 3150, is that correct?
4 A. That's correct.
5 Q. The purpose of that was to try to determine if
6 they knew the product or product category that
7 that was an advertisement for, correct?
8 A. That's correct.
9 Q. Then you showed them a series of six
10 additional Camel ads, one of which is Figure 2
11 at the top of Page 3150, correct?
12 A. No. That was not one of the ones we showed.
13 Q. But you had color copies of them here the
14 other day?
15 A. That's correct.
16 Q. And Xerox copies are here in exhibit --
17 A. That's correct.
18 Q. One of them is Page 87, correct?
19 A. Yes.
20 Q. After you showed the kids all the ads, you
21 asked them "What's your favorite brand,"
22 correct?
23 A. That's correct.
24 Q. The people who didn't express a favorite brand

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1 were chucked out of your analysis like we
2 talked about before, correct?
3 A. That's correct.
4 Q. When you took brand preference data from
5 adults, that was at a driver's license renewal
6 station, correct?
7 A. That's correct.
8 Q. Did you do any of that?
9 A. No, I did not.
10 Q. Who did that interview for you in
11 Massachusetts, do you know?
12 A. Sharon DiFranza.
13 Q. Your wife?
14 A. My wife.
15 Q. Does she share your bias about cigarette
16 smoking? Strike that. Does she smoke
17 cigarettes?
18 A. She does not smoke cigarettes.
19 Q. What did she tell you she thinks about
20 cigarette smoking?
21 A. She thinks that people should not smoke.
22 Q. She's a member of the control group that we
23 referred to earlier?
24 A. She's not a member of any tobacco control

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1 group.
2 Q. When data was gathered from those people at
3 the driver's license renewal area, they were
4 also shown --
5 A. I don't want to mislead you. There was
6 another person who interviewed those people
7 also.
8 Q. Who was that?
9 A. I provided you her name already,
10 Melinda Raboin.
11 Q. It's on that list that you gave us?
12 A. Yes.
13 Q. I know what you're talking about.
14 (Short break taken)
15 Q. Dr. DiFranza, I think just prior to the break
16 you had testified that the data gathering
17 protocol with respect to showing the adults
18 the seven ads, one of which was masked to
19 conceal the name of Camel brand and masked to
20 conceal the fact that it was a cigarette ad,
21 and that the others, which are identified as
22 exhibits in Exhibit No. 3, were shown to the
23 adults prior to the time they were asked to
24 express a brand preference, correct?

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1 A. That's correct.
2 Q. I'm going to return for just a second to this
3 issue of brand preference. We talked about
4 expressed brand preference, and we talked
5 about smokers who didn't express a brand
6 preference.
7 My take-away from your testimony was that
8 among that group of adults, or anyone who
9 smokes but doesn't express a brand preference,
10 there's an assumption that some portion of
11 them do actually have a brand preference but
12 just didn't tell you what it was, correct?
13 A. We're assuming that those people smoke, but we
14 don't know what they're smoking.
15 Q. It is a fact, is it not, that some smokers may
16 just not have a brand preference?
17 A. That's true.
18 Q. When you gathered the data from the adults,
19 your data showed that of those 21 years of age
20 and over 8.7 percent expressed a preference
21 for Camel, correct?
22 A. That's correct.
23 Q. When the national market share for Camel was
24 at or less than slightly more than half that

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1 figure, correct?
2 A. That's correct.
3 Q. Returning to your calculation, to the
4 calculation we discussed with you a minute
5 ago, if you assume at Page 4 of Exhibit 15 a
6 national adult market share of Camels at 4,
7 then the calculated share of underage smokers
8 is 16 or 16.2, correct?
9 A. I see that on the chart.
10 Q. That number is about half of your reported
11 number of 32.8, is that correct?
12 A. That's correct.
13 Q. Doctor, it is not unreasonable, is it, to
14 believe that since your data gathering
15 protocol produced Camel brand preferences
16 twice as high in the adults as the national
17 market share and twice as high in children if
18 the adult preference is 4.0 as shown in the
19 government figures that you referred to, it's
20 not unreasonable to assume, is it, Doctor,
21 that the method of gathering your data, i.e.,
22 showing the respondents seven advertisements
23 and then immediately asking them their brand
24 preference, caused an overrepresentation in

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1 responses indicating a Camel preference? It's
2 not unreasonable, is it?
3 I understand that you have some other
4 data that you're just anxious to tell me about
5 that responds to that, but it's not an
6 unreasonable assumption for one to make that
7 that is the factor that caused both groups to
8 overrepresent Camel by a factor of two, is
9 it?
10 MR. GREER: Objection as to form.
11 Q. Go ahead, Doctor.
12 A. Since we have further --
13 Q. I'm not talking about further. I'm just
14 asking you whether it's reasonable or
15 unreasonable.
16 A. It's unreasonable.
17 Q. You think it's unreasonable?
18 A. Yes.
19 Q. Why in your judgment is it unreasonable?
20 A. Because the only way -- rather than
21 speculating, it's unreasonable to speculate
22 when one has the actual data.
23 Q. But one has actual data that was collected
24 from respondents immediately after you showed

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1 them seven ads and then asked them what their
2 brand preference was and then discarded people
3 who didn't express a brand preference. That's
4 not unreasonable.
5 A. According to Dr. Mizurski, your consultant in
6 this case, his recommendation is that the only
7 way to know for certain the effect of showing
8 these ads before asking brand preference is to
9 repeat the study without showing the ads, and
10 that has been done.
11 Q. Did you talk to Dr. Mizurski?
12 A. No.
13 Q. How do you know what he has to say about that?
14 A. I have the document he prepared for
15 R.J. Reynolds.
16 Q. Which one is that?
17 A. He did a critique of the three JAMA studies
18 which your company provided to the Federal
19 Trade Commission.
20 Q. You got it from the FTC?
21 A. Yes. It's his recommendation that the study
22 be repeated without showing the ads to see
23 just what effect, if any, the ads would have
24 on the number of subjects who would say that

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http://legacy.library.ucsf.edu/tid/ojr07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 Camel is their favorite brand.
2 Q. Did you repeat the study? And if you did,
3 what did it show?
4 A. I did not repeat the study. An independent
5 researcher without my knowledge repeated the
6 study.
7 Q. Did you share your protocol with the
8 independent researcher?
9 A. No, I did not.
10 Q. So some independent researcher came up with a
11 different protocol without having the benefit
12 of what protocol you followed, correct?
13 A. She had my published report.
14 Q. The name of the independent researcher you
15 gave to us last time. I'm sorry. I can't
16 recall. What is her name?
17 A. Allison MacMillan.
18 Q. Do you know Allison MacMillan?
19 A. I met her on one occasion.
20 Q. Is she a student somewhere?
21 A. Yes.
22 Q. Where?
23 A. I don't know which school, in Worcester
24 somewhere. It's a business school.

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1 Q. How did you find out about her?
2 A. She is a student. She was assigned a --
3 Q. Undergraduate student or graduate student?
4 A. I believe she's an undergraduate student.
5 Q. Is she a freshman, sophomore, junior, senior,
6 do you know?
7 A. I don't know.
8 Q. What kind of experience and qualifications
9 does she have other than being an
10 undergraduate student, if you know?
11 A. I don't know her background.
12 Q. Is she an English major, sociology major?
13 A. I think she's in business.
14 Q. Business major. Did she go to college from
15 high school, do you know?
16 A. I don't know.
17 Q. Do you know how old she is?
18 A. No.
19 Q. Did she do this herself, or did she have some
20 help?
21 A. I don't know.
22 Q. So an undergraduate student who you met one
23 time who you think is a business major, you
24 don't know how old she is, and you don't know

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what kind of experience she has, repeated a study having your published results but not your protocol; is that basically right?

A. The protocol is in the published results.

Q. Do you have her protocol?

A. I don't have it written out.

Q. Have you ever?

A. I had the results, and she explained to me what she had done verbally.

Q. By phone or in person?

A. By phone.

Q. Have you ever had her results in hard copy anywhere?

A. Yes.

Q. Where are they?

A. I have them with me.

Q. Can you show them to us?

A. Sure.

Q. While you're looking for those, Doctor, I take it that you do rely upon the results of her study to validate your methodology?

A. I do.

Q. So you find that the results of her study are scientifically credible?

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1 A. Yes.
2 Q. It is the kind of study scientists would
3 usually rely upon?
4 A. Yes.
5 Q. By an undergraduate business major?
6 A. Well, in science we look at the data and the
7 methods. We don't pre-judge studies on who
8 did them.
9 Q. You've handed me one legal size piece of paper
10 with a lot of charts on it. At the bottom is
11 written "Allison MacMillan," and at the top is
12 written in "What brand do you smoke?" Is that
13 correct?
14 A. Yes.
15 (Exhibit No. 16, Chart, marked for
16 Identification)
17 Q. Before we go to the charts, why don't you tell
18 me what she told you about her study on the
19 telephone?
20 A. What I was interested in was whether she had
21 -- since this was done in the same school that
22 we had done our study in and since it includes
23 all the students in the school instead of just
24 a sample --

http://legacy.library.ucsf.edu/tid/jrr07a00/pdf
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Q. Is this a high school or --

A. It's a high school.

Q. High schools in Massachusetts, is that 10, 11, and 12?

A. 9 through 12.

Q. Tell me why you don't want to tell me what school it is.

A. Because I'm concerned that the school may be subject to harassment.

Q. Okay. It shows here 708 students in the school. Do you know if that's the total enrollment in the school?

A. That was everybody who was present when they did the study.

Q. This would include the people that you had done your study on before, is that correct?

A. Except some of our students had graduated and some new students had come in.

Q. Had all your subjects graduated?

A. No.

Q. Some of them were still there?

A. Most of them.

Q. Most of them were still there?

A. Yes.

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1 Q. Did you give them a DOC talk after you did
2 your study?
3 A. Not really, no. We had explained what the
4 study was about.
5 Q. What did you tell them after you collected the
6 data?
7 A. The DOC talk would have discouraged them from
8 smoking Camels.
9 Q. I don't care what the result of it was. I
10 just want to find out what you did. Did you
11 give them a DOC talk or not?
12 A. Gave them about a three-minute explanation of
13 what the study was about.
14 Q. What did you tell them?
15 A. Which is not what we normally do at the DOC
16 talk.
17 Q. What did you tell them?
18 A. We told them the hypothesis was that these
19 advertisements were targeted at children and
20 not at adults.
21 Q. Anything else?
22 A. That's the gist of it.
23 Q. For three minutes you told them the
24 advertisements were targeted at children. Did

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1 you tell them they shouldn't smoke?
2 A. No, we never told them that.
3 Q. You gathered your data again, when was that,
4 from this school in Massachusetts?
5 A. It would have been the winter of -- it was
6 published in '91, so it would have been the
7 winter of '90, '91.
8 Q. You took 60 students in each grade, 9 through
9 12, correct?
10 A. Approximately.
11 Q. The guys in grade 12 would have graduated?
12 A. Yes. We had 224 subjects from this school.
13 Q. Would one grade have graduated as of the time
14 she did this study?
15 A. Yeah.
16 Q. So the children that she talked to in Grades
17 9, 10, and 11 were still there except they
18 were 10, 11, and 12, and a new category was
19 the new kids in Grade 9, correct?
20 A. That's correct.
21 Q. How did you find out about her?
22 A. Well, she was assigned a research project to
23 do and this was --
24 Q. By who?

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A. By her teacher.

Q. Do you know her teacher?

A. No.

Q. Do you know the school she's going to?

A. No.

Q. She was assigned a research project.

A. Like a term project. And just before she had this assignment all the publicity about my study was in the papers, so she decided she'd do the same study, only I don't know for whatever reason she did this, is that the first thing she started with was the brand preference questions. Then only after the data was collected on brand preference did she then show the ads and then asked questions about the ads.

Q. How do you know this protocol? Is this written down somewhere?

A. No.

Q. It's just your recollection of what she told you?

A. I called her about a month ago.

Q. Before the last deposition?

A. Yes, and asked specifically, "Did you show

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these kids any ads before you asked their brand preference?" And she said no. She had the paper folded over and they had to fill out their brand preference, then when everybody was done, then they were allowed to open it up and then they saw the ads.

Q. I asked you a question earlier. I don't think I ever got an answer to it. How did you find out about her? You told me she was assigned a --

A. As part of the project she interviewed me.

Q. She called you up and wanted an interview?

A. Yes.

Q. Before or after she collected her data?

A. I don't recall because I didn't know she was doing this study in the schools until after she was done with her report and then she sent me this paper here.

Q. When she interviewed you, did she tell you that she had already done the study?

A. No.

Q. When she interviewed you, she didn't tell you she was going to do a study?

A. No.

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1 Q. What did she want to find out from you?
2 A. Background on -- she's a business person. So
3 this involves a company, so she wanted to know
4 more about the kids and smoking and why kids
5 smoke and that sort of thing, just like the
6 newspaper reporter.
7 Q. How long did the interview take?
8 A. About, I believe, an hour.
9 Q. Did you give her any written information?
10 A. I think I provided her with some articles that
11 she made Xeroxes of.
12 Q. Did she tell you that she had an opinion on
13 cigarette smoking?
14 A. No, she did not.
15 Q. Did she smoke while she was visiting with you?
16 A. There's no smoking allowed in our office.
17 Q. I see. Was she smoking out in the parking lot
18 that you could see?
19 A. I don't believe she is a smoker.
20 Q. She's not?
21 A. I don't believe so.
22 Q. So during the course of your interview you
23 gave her some articles, and you and she
24 discussed what influences cause people to

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1 smoke, correct?
2 A. That's correct.
3 Q. Anything else that you all discussed before
4 she left?
5 A. We definitely didn't discuss the study. I
6 don't know if she was planning it then or she
7 thought of it after she left. I doubt if she
8 had already done it because I think she would
9 have mentioned it to me.
10 Q. Do you know if she used questionnaires?
11 A. Yes, she did.
12 Q. Do you have a copy of one of them?
13 A. No.
14 Q. Did she ever give you a copy of one?
15 A. She never provided me with that. This is the
16 only documentation I have from that study.
17 Q. Do you know what questions she asked to
18 determine whether or not someone was a smoker?
19 A. No.
20 Q. Do you know what questions she asked to
21 determine brand preference?
22 A. I don't know any of the questions that she
23 asked.
24 Q. All you know is what's been reported here in

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1 front of us on Exhibit 16, correct?
2 A. Correct, and that the data was collected on
3 brand preference before she had shown any ads
4 for any brand.
5 Q. Doctor, are all of your doubts about the
6 question or the bias issue now resolved as a
7 result of what Allison MacMillan did at the
8 same school where you collected your data?
9 A. Absolutely.
10 Q. So from your standpoint as a scientist this is
11 enough; you don't need anything more, correct?
12 A. Yes.
13 Q. From your perspective, question order bias is
14 a matter that does not affect gathering data
15 with respect to consumer products?
16 A. I would not generalize it beyond saying that
17 there's absolutely no evidence that there was
18 any bias of the data we collected by showing
19 the ads.
20 Q. Based on what Allison MacMillan did?
21 A. Based on the fact that without showing the ads
22 she got 24.8 percent of the kids were smoking
23 Camel and we got, in the same school, 21.8
24 percent. So, if anything, she had a higher

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1 proportion of kids smoking Camels when there
2 were no advertisements shown at all. So I'd
3 say there's absolutely no evidence that there
4 was any question order bias.
5 Q. You can put the results in the record if you
6 want to. Is there anything else you want to
7 say about that? I'm more interested, Doctor,
8 in what it takes to convince you as a
9 scientist that the issue of question order
10 bias is one which would not affect or inaffect
11 the gathering of your data?
12 A. Yes, I --
13 MS. CUNEO: Objection. Overly broad.
14 MR. GREER: It wasn't a question at all.
15 It was a little speech.
16 Q. But you were going to respond to my little
17 speech.
18 MR. GREER: No, there was no question.
19 There was nothing to respond to.
20 MR. DONAHUE: I think he's answered the
21 question, Ed.
22 Q. So based upon Allison's study we can conclude
23 -- you can conclude, that the fact that twice
24 as many Massachusetts adults expressed a

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1 preference for Camel than the national
2 average, and that assuming adult brand
3 preference of Camel is 4 but not your
4 calculated at 3.43, twice as many children
5 expressed a brand preference for Camel is in
6 no way related to question order bias, right?
7 MS. CUNEO: Objection. Compound.
8 A. I don't understand the question.
9 Q. We can assume then or can you assume -- I'm
10 sorry. You can conclude based upon Allison's
11 work that the fact that more than twice as
12 many adults in Massachusetts following your
13 data gathering protocol expressed a brand
14 preference for Camel than the national average
15 for Camel use, and assuming a 4.0 adult share
16 for Camel brand and using your formula, more
17 than twice as many children also expressed a
18 preference for Camel than would have had the
19 adult market share been 3.43 as you calculated
20 in no way is related to question order bias,
21 is that correct?
22 MR. DONAHUE: If you don't understand,
23 that's fine.
24 MR. GREER: I don't understand that

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1 question. I'm not going to permit my client
2 to respond to a question I can't understand.
3 Q. Let me ask you a different question.
4 MS. CUNEO: I'm going to object. It
5 seems to assume a lot of things.
6 MR. DONAHUE: It doesn't assume anything
7 more than the doctor has already testified to.
8 Q. Doctor, did you understand what I was saying?
9 A. No.
10 Q. You've earlier testified that 8.7 percent --
11 A. Maybe if you broke it up.
12 Q. No, no, I don't want to do that. You earlier
13 testified that 8.7 percent of adults, 21 years
14 of age and over, who expressed a brand
15 preference for Camel after having been shown
16 the ads, and that was more than twice the
17 national market share for Camel, you testified
18 to that, correct?
19 A. Yes.
20 Q. We spent a little bit of time talking about
21 some of the things that could have influenced
22 that, some of the things that could have
23 resulted in your adults preferring Camel brand
24 at a rate twice the national average, correct?

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A. That's correct.

Q. Among the factors that we earlier considered but which you now reject based upon Allison's work is question order bias, correct?

A. Correct.

Q. We also talked about your calculation, your algebraic calculation shown in Exhibit 9, where you assumed the accuracy of your observed underage market share figure of 32.8 percent, correct?

A. That's correct.

Q. And then calculated an adult market share of 3.43. We talked about that, didn't we?

A. That's correct.

Q. You also testified that if instead of calculating an adult market share of 3.43 if we rather assumed, using your formula and your assumptions other than the calculated market share, if we assumed adult market share of Camel at 4.0 and let underage be the variable, we then calculate 16 to 16.2 percent, correct?

A. I said that was an invalid calculation.

Q. It's invalid because of the arithmetic or it's invalid because of the assumptions?

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A. Both.

Q. Pardon me?

A. Both.

Q. Why is the arithmetic wrong?

A. Because a very minor error in measurement of brand preference among adults would be multiplied 30 fold to make brand preference among children inaccurate.

Q. I'm not asking you where the sensitivites lie here, Doctor. I'm simply asking you if you use your formula as appears on Exhibit 10, that appears at the top of 10, you have 3.43 multiplied by 32.8 plus 96.7 multiplied by X, which is your unknown adult market share variable, equals 4.4 times 100 percent. That's the algebraic formula, is it not?

A. That's correct.

Q. When you did your calculation, you assumed the accuracy of the underage market share of Camel brand as 32.8 percentage, and based on that assumption and some other assumptions you wanted to calculate adult share, correct?

A. Correct.

Q. All I've suggested to you, Doctor, is that

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1 instead of assuming the accuracy of the
2 underage market share you decide that that
3 will be your unknown and you put an X there,
4 and if you assume the accuracy of the adult,
5 if you assumed that the adult Camel brand
6 share is 4.0 as is shown in Exhibit 14 which
7 was the only adult brand preference data you
8 referred to in your article --
9 A. I don't think I referred to that.
10 Q. -- is 4, assuming it was 4, when you do the
11 calculation you arrive at a figure between
12 16.0 and 16.2. Why is --
13 MR. GREER: Are you testifying or are
14 you --
15 MR. DONAHUE: I'm asking him if that's
16 correct.
17 MR. GREER: He's stated that because
18 methodologically you've got a 900 fold
19 difference it's not a meaningful calculation.
20 MR. DONAHUE: I don't care if it's
21 meaningful or not.
22 MR. GREER: He so testified several
23 times.
24 MR. DONAHUE: I don't care what he thinks

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about the meaningfulness of the calculation. That's totally transparent for the purpose of this question. I'm just trying to get him to admit it and --

MR. GREER: To admit what?

MR. DONAHUE: This is like two plus two is four.

MS. CUNEO: Why does he have to admit that if you can do it yourself, in fact, five or six times?

MR. GREER: Is it true that two plus two is four; is that what you're asking him? Are you asking him a multiplication question?

Q. See, Doctor, we're getting to a point where it's becoming apparent that the way you gathered your data resulted in a two times increase in market share for Camel, both among children, both among adult, and that's why they won't let you testify to that.

MR. GREER: Don't argue with the witness.

MS. CUNEO: Objection.

MR. DONAHUE: Let's go back and I'll go through it again. We can stay all day if you want.

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1 MR. GREER: We can stay here all day.
2 I'm not going to have him testify as to a
3 mathematical calculation.
4 MS. CUNEO: Asked and answered. I don't
5 think you need him to answer the question.
6 You've done the math by yourself. You have
7 testified as to what your belief is. There's
8 no necessity --
9 MR. DONAHUE: If we had a fender bender
10 and there were five witnesses, you can't say
11 that one of them can't testify as to what
12 color the light was because there were four
13 other guys going to say the same thing.
14 Okay?
15 MS. CUNEO: That is completely an absurd
16 analogy.
17 MR. DONAHUE: That's your opinion.
18 Q. Doctor, let's go back. Using your formula and
19 using your assumptions, if we take the
20 underage share of Camel as an unkmown and put
21 an X where you have 32.8 and take the adult
22 share of Camel where you have an X and put in
23 4.0, which is the same number that appears as
24 adult market share for Camel in Exhibit 14, if

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1 we do that, and if we do the arithmetic, the X
2 comes out to be 16 or 16.2, does it not?
3 A. That's not -- you have misstated my
4 assumption. This equation is based on the
5 assumption that adult market share can be
6 computed from knowledge of the children's
7 market share, but not the opposite. And the
8 reason that is, is clear from Page 1 on
9 Exhibit 15, is that by knowing the children's
10 underage share, as you've labeled it here, one
11 can determine with a great degree of accuracy
12 what the adult market share is, but because a
13 very small fluctuation in the adult market
14 share results in dramatic fluctuations in the
15 children's that you cannot do the same
16 calculation in reverse.
17 Q. You can do the calculation, but you may not
18 have confidence in the results, is that
19 correct?
20 A. You might have to say that the answer is 16
21 plus or minus 50 percent.
22 Q. That's fine. If you want to say that, you can
23 say the answer is 16 plus or minus whatever
24 figure you want to put in there that

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1 represents your opinion of the confidence
2 intervals. I don't care about that.
3 A. My paper clearly states that what we were
4 assuming is that adult share could be
5 calculated based on the children's share, not
6 vice versa.
7 Q. Your opinion is you can't do it vice versa?
8 A. That's right.
9 Q. Will you indulge me in the proposition that
10 someone else may not share your opinion?
11 A. I'm sure you don't share my opinion.
12 Q. Given that, all I'm asking you --
13 A. The number there would be 16 if one were to do
14 the arithmetic.
15 Q. Thank you.
16 MS. CUNEO: He already answered that
17 about two hours ago. In fact, I think he
18 answered it twice.
19 Q. Your concern about identifying the school
20 relates to your not wanting the school
21 administration or the kids to be harassed, is
22 that right?
23 A. That's correct.
24 Q. Who do you think is going to harass them?

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A. Well, I read in some news media that the R.J. Reynolds Company was interested in contacting the subjects involved in the JAMA studies to see if they actually did participate. I think that --

Q. That would be harassment --

A. I think any anonymous research subject would be shocked to find out that they had been approached by a hostile company.

Q. How about Allison, was she harassing them when she went back to talk to them?

A. She didn't know that these -- this was a complete coincidence, that she happens to live in the town where I had done the study.

Q. She didn't know what school you did?

A. No, because we had never published that information.

Q. If Allison had asked you which school you did the work at, would you have told her?

A. That's a hypothetical question.

Q. Have you got a hypothetical answer?

A. Hypothetically I --

MR. GREER: You don't have to speculate.

A. I don't know.

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1 Q. You might have? You might not have? It's
2 okay if she goes and talks to them, but it's
3 not okay if an independent third person wants
4 to verify that they participated in the study;
5 is that what you're telling us?
6 A. I had previously stated that if -- I don't
7 know who I stated it to, but if it was
8 necessary to confirm that the study had been
9 done I could have the principals of the
10 schools write letters and sign affidavits
11 saying that the study was conducted.
12 Q. You recall during the other deposition
13 referring to a likert scale?
14 A. Yes.
15 Q. Here in Exhibit No. 3 at Page 96 would be an
16 example of a series of questions with a likert
17 scale, is that correct?
18 A. That's correct.
19 Q. Those would be questions that allow the
20 respondent to answer by checking one of, in
21 this case, five blocks beginning with strongly
22 agree, going to agree, not sure, disagree, and
23 strongly disagree, correct?
24 A. That's correct.

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1 Q. That's the likert scale?
2 A. That's correct.
3 Q. Those kinds of likert scale questions also
4 appeared in the final survey questionnaire at
5 Page 76, correct?
6 A. Yes.
7 Q. On Nos. 23 and 24?
8 A. That's correct.
9 Q. The question was, I plan to smoke cigarettes a
10 month from now, and the respondents could
11 answer strongly agree, agree, not sure,
12 disagree, or strongly disagree, and they were
13 also asked I plan to smoke cigarettes a year
14 from now, and they had the same options to
15 answer, correct?
16 A. Correct.
17 Q. Also in that same questionnaire at Page 75,
18 Doctor, you asked at Questions 8 and 9 whether
19 they think smoking makes them more popular to
20 which they could agree or disagree, and
21 smoking makes you look more attractive to
22 which they could agree or disagree, is that
23 correct?
24 A. That's correct.

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1 Q. Do you know how many responses to Question 8
2 or 9 you had that indicated agree?
3 A. Yes.
4 Q. How many were there?
5 A. This is more popular and more attractive.
6 Q. Is this another calculation that you've done
7 since we were together last?
8 A. Yes.
9 Q. You've pulled a piece of paper out in front of
10 you. I assume you don't have any reluctance
11 to share it with us.
12 A. That's right.
13 Q. What is it?
14 A. It's a compilation of those two questions.
15 MS. CUNEO: Which questions?
16 MR. DONAHUE: It's No. 8 and 9 at Page
17 75, Exhibit 3 of the first deposition.
18 A. Question 8 asks whether the subject believes
19 that smoking makes one more popular. There
20 were 53 positive responses. 53 subjects
21 agreed with that, and 997 disagreed with that
22 statement.
23 Q. 53 agreed?
24 A. Yes.

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1 Q. And 900 --
2 A. -- and 97.
3 Q. Disagreed?
4 A. That's correct.
5 Q. 95 percent disagreed, and 5 percent agreed?
6 A. That's correct.
7 Q. That was with respect to all respondents?
8 A. All 1,050.
9 Q. What happened to the other five?
10 A. Five of the questionnaires were not usable
11 because the students didn't fill out enough of
12 it. That's in the first sentence of the
13 results section, I believe.
14 Q. "Results: Usable surveys were obtained from
15 1,055 students."
16 A. Oh, okay. Five of the students didn't answer
17 that question then in addition to the five
18 that were excluded.
19 Q. How about the numbers for No. 9, smoking makes
20 you look more attractive? How many agree and
21 how many disagree?
22 A. 35 agreed, and 1,017 disagreed.
23 Q. 97 percent thought that smoking made you
24 unattractive, and only 3 percent agreed that

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1 smoking made you look attractive, is that
2 about right?
3 A. I got 3.3 percent.
4 Q. I got .0344 but -- so that from at least that
5 little bit of data one could conclude that a
6 significant or overwhelming majority of the
7 kids you talked to didn't think that cigarette
8 smoking made you more popular or attractive,
9 correct?
10 A. That's correct.
11 Q. How many nonsmokers among the 1,055 students
12 did you have?
13 A. I don't have that. Do you see anywhere in the
14 paper that --
15 Q. You know, you can look at those. I guess,
16 Doctor, you could look at Page 3151 at the top
17 of the center column where you report that
18 29.0 percent of children report some current
19 cigarette use, and one could calculate what is
20 71 percent of the 1,055, and that would be a
21 number, but I just don't know if that's the
22 right number because I didn't do it.
23 A. That's a reasonable calculation. I'm not sure
24 it would come out to the last student because

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1 of rounding off, but it would give you a close
2 approximation.
3 Q. I get 749.
4 A. That sounds reasonable.
5 Q. Sounds about right?
6 A. Hm-hm.
7 Q. You couldn't subtract 261 from 1,055 because
8 there's that population of --
9 A. Disappearing students.
10 Q. Right, of no preference people. In Question
11 23 and 24 on Page 77 -- strike that -- 23 and
12 24 on Page 76, 23 said that I plan to smoke
13 cigarettes a month from now, and then 24 is
14 the one I'm interested in, I plan to smoke
15 cigarettes a year from now, and on a likert
16 scale one could either strongly agree, agree,
17 not sure, disagree, or strongly disagree. How
18 many of the nonsmoking students responded to
19 Question 24 by checking either disagree or
20 strongly disagree?
21 A. I don't have those numbers. What I can
22 provide you with is for all students how many
23 fell into each category. That's what I have
24 here. I don't have them broken down.

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Q. You don't have it down for nonsmoking? You didn't do that?

A. It's been done, but I don't have that here.

MR. DONAHUE: Mark that as Exhibit 17.

(Exhibit No. 17, Computer Printout, marked for Identification)

Q. I've marked as Exhibit 17, Doctor, another copy of Exhibit 9 which a computer printout. It is possible, is it not, to go down these tables and to identify students who in response to Question No. 24 said either they -- strike that -- either they strongly agree or agree that they plan to smoke cigarettes a year from now and to correlate those with whether or not they are smokers as reflected in their response to Question 16 or 17?

A. Yes.

Q. It's certainly possible to do that, correct?

A. Yes.

Q. Doctor, at page -- by the way, the copy of this that you gave to us on the second page had handwriting at the top, and you were kind enough to identify what each of those columns meant. That's in your handwriting, isn't it?

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1 A. That's correct.

2 MR. GREER: Could you explain what the

3 difference is between Exhibit 9 and Exhibit

4 17?

5 MR. DONAHUE: I'm about to do that right

6 now.

7 Q. The first part of Exhibit 9 was the adult

8 data, is that correct? You don't start

9 picking up on the children's data until you

10 get about Page 8 because you get more

11 information?

12 A. That's correct.

13 Q. On Exhibit 17 at Page 20 we've highlighted one

14 of the entries. You can identify which

15 student filled out which of these

16 questionnaires by an identifying number that

17 you asked them to put on their questionnaires,

18 is that correct? You were careful not to ask

19 them for their name, but you asked them for a

20 number, didn't you, or you assigned a number?

21 A. We assigned a number as we were entering the

22 data into the computer.

23 Q. Each of the questionnaires were separately

24 numbered?

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A. Yes.

Q. The number appears on your coding format. The first one is No. 1, the very left-hand column?

A. That's correct.

Q. The second one is No. 2, the very left-hand column, that identifies the coding formula. At page --

MR. GREER: 18.

Q. Page 18 -- strike that -- Page 20, I've identified Entry No. 1635, and we've highlighted that, and at the very right-hand side we have a one in the column, which if you want to go through looking at your stuff will indicate to you whether they agreed or strongly agreed that they plan to start smoking a year from now, and then back in one of the earlier columns is some identifying information as to whether or not they're smoking. And at Page 19 there's another one.

We found two people who responded to Question 24 which asked, I plan to smoke cigarettes a year from now, as either agreeing or strongly agreeing from among the people who do not smoke. You follow what I just said?

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1 A. Yes.

2 Q. We identified all of your student respondents
3 who according to the smoking questions said
4 they didn't smoke and then from among them
5 identified which ones said they planned to
6 start smoking a year from now by either
7 agreeing or strongly agreeing, and we came up
8 with two. I think we read them into the
9 record. There were 1692 -- 1592, I'm sorry,
10 and 1635.

11 Doctor, I know it's not possible for us
12 to sit here and ask you to go through all
13 those numbers. I don't really ask you to do
14 it. Although, I certainly would like for you
15 to do it later if you disagree with the
16 proposition that only two of the nonsmoking
17 students expressed an intention to smoke in
18 the future.

19 A. So you're claiming that these are the only
20 two?

21 Q. I'm saying we've reviewed your data, and
22 that's what we found. I'm not claiming
23 anything because I don't know. I didn't enter
24 the data. I didn't take the data, collect

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1 it. All we're doing is looking at numbers you
2 gave us.
3 Based on the numbers you gave us and
4 assuming that they were entered accurately, we
5 found -- we may not have done it right -- we
6 found two students who were not smokers who
7 expressed an intention to smoke in the future
8 by answering, a year from now, by answering
9 the question either agree or strongly agree.
10 Do you agree or disagree with that number, or
11 do you have any reason to believe it's wrong?
12 A. It seems awful low.
13 Q. How many were there?
14 A. I don't know.
15 Q. Refer, if you would, please, to your article
16 at Page 3151, center column, halfway down.
17 A. Yes.
18 Q. Excuse me. It's more than halfway down, in
19 the paragraph just before "comment," the
20 sentence just before "comment" says, "Among
21 nonsmoking children, those who believed that
22 smoking would make them more attractive were
23 eight times more likely to express an
24 intention to smoke in the next year."

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1 How many nonsmoking children were there
2 who believed that smoking would make them more
3 attractive and who also expressed an intention
4 to smoke in the next year? We found two.
5 A. There were 11 nonsmoking students who felt
6 that smoking would make them more attractive.
7 Q. Of those how many expressed an intention to
8 smoke in the future?
9 A. I don't have that. What I have is that among
10 those students they were 8.3 times more likely
11 to plan to smoke in the next year, and that
12 when we did the Fisher's (phonetic) exact
13 test, because the numbers were small, we found
14 that the odds of this magnitude occurring by
15 chance were less than 1 in 5,000.
16 Q. I understand there are tests of statistical
17 significance, but I'm more interested in sizes
18 of the cells right now, Doctor.
19 A. I did not bring -- if you indicated you were
20 interested in it, I could have brought that
21 data, but I have only that among the
22 nonsmoking students --
23 Q. How many nonsmoking students believed that
24 smoking would make them more attractive?

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1 A. 11.
2 Q. So all we have to do is figure out 12.5
3 percent of 11, and we've got the number?
4 A. Where does 12.5 come from?
5 Q. Strike that. It was eight times. Is it
6 possible to calculate how many students it
7 would be that would have not smoked who
8 believe smoking would make them more
9 attractive and express an intention to smoke
10 in the future?
11 A. Not from the data I brought with me today.
12 Q. But there were only 11 students total from
13 which to choose, is that correct?
14 A. That's correct.
15 Q. So when you make this statement in your
16 article, "Among nonsmoking children, those who
17 believed that smoking would make them more
18 attractive were eight times more likely to
19 express an intention to smoke in the next
20 year," of the 1,055 students that you
21 interviewed there were only 11 capable of
22 being involved in that analysis, is that
23 correct? No?
24 A. No.

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1 Q. Because only 11 of them were nonsmokers and
2 believed that smoking would make them more
3 attractive?
4 A. Those 11 were part of a population of 744
5 students who were considered in that analysis
6 because we were comparing the 11 to the other
7 733.
8 Q. Maybe I misunderstood. I'm sorry. Did you
9 say there were 11 nonsmoking students --
10 A. Who thought smoking would make you more
11 attractive.
12 Q. -- and who expressed an intention to smoke in
13 the future?
14 A. No.
15 Q. So what you are trying to do, Doctor, is to
16 determine from among nonsmoking students those
17 who believe smoking would make them more
18 attractive and seeing if they are eight times
19 more likely to express an intention to smoke
20 in the next year, is that right?
21 A. That's what we found.
22 Q. But, again, I'm just trying to get to the
23 issue of how many people there are in this
24 analysis, in portions of this analysis. And

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1 in one portion of the analysis, that is,
2 nonsmoking children who express an intention
3 to smoke in the next year, of all the 1,055
4 students you had we only found two that were
5 both nonsmokers and expressed an intention to
6 smoke in the next year. Does that sound right
7 to you or wrong?
8 A. No, because we considered those students who
9 were ambivalent about their future smoking
10 intentions together with those who were clear
11 that they wanted to smoke.
12 Q. Why did you do that?
13 A. We did that -- and that's why I brought this
14 analysis at the top of the page here, was
15 because when you consider all the students,
16 both the smokers and the nonsmokers, and you
17 asked them all whether they plan to smoke in
18 the next year, there's only 10 percent of
19 those students who plan to smoke. What we
20 were looking at is we knew that at least 18
21 percent to 25 percent of these students were
22 going to end up to be smokers, and those were
23 the students we were interested in as to what
24 their opinions about smoking were.

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1 Q. Let me just ask you a question then. At the
2 very bottom of the paragraph that ends on Page
3 3151 in the center above the word "comment"
4 appears the language, "to express an intention
5 to smoke in the next year." Did I read that
6 right?
7 A. Hm-hm.
8 Q. "To express an intention to smoke in the next
9 year." In order to have expressed an
10 intention to smoke in the next year a student
11 would have had to answer Question 24 either
12 strongly agree or agree, would they not?
13 A. If you see in the paragraph above that, it's
14 clear that we were including the ambivalent
15 students with those who expressed a definite
16 intention.
17 Q. It's not clear at all to me. It wasn't clear
18 to anybody who read it. It hasn't been clear
19 until I heard it from you for the first time,
20 Doctor.
21 MS. CUNEO: Objection.
22 Q. That when you made the statement, "express an
23 intention to smoke in the next year," I'm
24 trying to figure out how you identify people

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1 from among your study cohort who have
2 expressed an intention to smoke in the next
3 year. That's all I'm interested in now.
4 We can explain it later, but right now
5 all I want to find out from you, Doctor, is
6 whether when you identified people who
7 expressed an intention to smoke in the next
8 year you included anyone other than people who
9 answered Question 24 agree or strongly agree,
10 yes or no.
11 MR. GREER: Asked and answered.
12 MR. DONAHUE: It has not been asked and
13 answered. It hasn't been asked or answered.
14 Q. Yes or no? Did you include anyone other than
15 those two categories?
16 A. We included those who were ambivalent.
17 Q. When you made the statement in your article
18 that a certain group of people expressed an
19 intention to smoke in the next year, you
20 included people who said, I agree that I plan
21 to smoke in the next year strongly, I agree
22 that I plan to smoke cigarettes a year from
23 now, and I'm not sure whether I'll smoke
24 cigarettes a year from now; you included all

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1 three?
2 A. Just as I state in the research paper that was
3 published.
4 Q. Where did you state that?
5 A. Page 3151, the very middle of the middle
6 column. It reads, "Among the nonsmoking
7 children, those who either were ambivalent
8 about their future smoking intentions or
9 expressed a definite intention to smoke were
10 more approving of the advertisements" --
11 Q. I saw that. I also saw that if you turn over
12 to the next page, Doctor, in the middle of the
13 middle column of Page 3152, about 40 percent
14 of the way down is the ambivalent. You see
15 that?
16 A. Yes.
17 Q. It's the same thing. You said when you were
18 talking about children, the effect of the
19 advertisements on children, you talked about
20 being ambivalent or expressing a definite
21 intention. But later in the article when you
22 were comparing, when you were trying to
23 predict what a nonsmoking person was likely to
24 do based upon attitudes derived apparently

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1 from ads, you didn't say a word down here just
2 above the word "comment," nor did you say a
3 word at the center of Page 3152.
4 A. I did say a word there.
5 Q. You said, "Nonsmoking children who believed
6 that smoking would make them more popular were
7 eight times more likely to express an
8 intention to smoke in the future." That's
9 what you said, isn't it?
10 Wouldn't it have been more accurate to
11 have said, Nonsmoking children who believe
12 that smoking would make them more popular were
13 eight times more likely to express an
14 intention to be ambivalent about or to smoke
15 in the future; isn't that what you really
16 meant?
17 A. That's what we meant.
18 Q. Why didn't you say it?
19 A. We used the exact same analysis for all of
20 these. We explicitly stated it in two cases
21 in the text, and it was implied in the third.
22 Q. So at Page 3151, again, just above the word
23 "comment," it was your intention to write, in
24 expectation that scientists in the world would

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1 read, that when the words more likely to
2 express an intention to smoke in the future in
3 the next year should mean more likely to
4 express an intention to be ambivalent about or
5 to smoke in the next year; that was your
6 intention?
7 A. That's what our intention is.
8 Q. Do you think your intention is fairly stated
9 there, Doctor? Do you, really?
10 A. It looks like it is subject to
11 misinterpretation.
12 Q. We didn't understand it. I know that doesn't
13 cause you much sleeplessness, but I got to
14 tell you we didn't understand it.
15 MS. CUNEO: Anything else you'd like to
16 testify to for the record, Mr. Donahue?
17 Q. It could have been more clearly stated,
18 correct?
19 A. It could have been more clear.
20 Q. And it could have been more accurately stated?
21 MS. CUNEO: Objection.
22 MR. GREER: Objection.
23 Q. Couldn't it?
24 MS. CUNEO: In whose opinion?

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1 MR. DONAHUE: Any reasonable observor's
2 opinion.
3 MS. CUNEO: Objection.
4 A. I'm not aware of anybody else having
5 misinterpreted that statement.
6 Q. We'll leave that beauty to be in the eyes of
7 the beholder. At Page 75 of the data, Doctor,
8 you collected in Questions 4 to 10 information
9 from which you calculated an appeal score, is
10 that correct?
11 A. Those items we used for the appeal score were
12 Items 4 through 7.
13 Q. So you had information from which you could
14 make a conclusion whether or not the ads were
15 appealing?
16 A. That's correct.
17 Q. You compared children to adults as to whether
18 or not more children or less children than
19 adults thought the ads were appealing, is that
20 correct?
21 A. That's correct.
22 Q. You also gathered in Questions 8 and 9
23 information on whether or not smoking makes
24 you popular or more attractive, is that

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1 correct?
2 A. That's correct.
3 Q. As we've just discussed, you analyzed that
4 with reference to whether or not it would
5 cause a person to be more or less likely to
6 express an intention to be ambivalent or to
7 smoke in the future, correct?
8 A. That's correct.
9 Q. At least that was your intention?
10 A. That's correct.
11 Q. Did you ever compare the appeals score with
12 the information gathered in Questions 8 and 9,
13 that is, whether or not smoking makes you more
14 popular or more attractive?
15 A. Yes, we did.
16 Q. Where does that appear in the article?
17 A. Page 3151, the middle column. I don't know
18 how you count it as a paragraph.
19 Q. First full paragraph, second full paragraph?
20 A. Second full paragraph. The sentence reads,
21 "Among the nonsmoking children, those who
22 either were ambivalent about their future
23 smoking intentions or expressed a definite
24 intention to smoke, were more approving of the

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1 advertisements than those children who
2 intended not to smoke."
3 Q. I'm sorry. That wasn't clear. That's not the
4 question. That compares intention to smoke
5 with their appeal score?
6 A. That's right.
7 Q. I'm just wondering, Doctor, if you ever tried
8 to find out -- let me just state this in a
9 bottom line fashion, whether you ever analyzed
10 the data that you had available to you to
11 determine whether or not people who found the
12 ads appealing were more or less likely to
13 think that smoking would make them attractive
14 or more popular?
15 A. I don't recall making that analysis.
16 Q. Do you have any idea of what such an analysis
17 would show?
18 A. No.
19 Q. You earlier indicated, did you not, that 94,
20 95 percent of all the respondents did not
21 think that smoking would make you popular and
22 97 or 98 percent didn't think it would make
23 you more attractive? Do you remember those
24 numbers we went through?

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1 A. That's correct.
2 Q. So that an overwhelming majority of the
3 respondents didn't think cigarette smoking
4 would make you either more popular or
5 attractive, is that correct?
6 A. That's correct.
7 Q. That was true whether or not they thought the
8 ads were appealing or not, isn't that true?
9 A. I don't have that breakdown.
10 Q. Would you have reason to disagree?
11 A. I would say that because so many of the
12 children found the ads to be appealing only a
13 minority of those students who found the ads
14 to be appealing would believe that smoking
15 makes you more popular or more attractive.
16 Q. What I'm trying to get at, Doctor, is whether
17 or not you, in fact, analyzed the issue of
18 whether or not there was a correlation between
19 the appeal score and whether or not the people
20 thought the ads made you more attractive and
21 more popular?
22 A. No, that was not part of the study.
23 Q. Based on the numbers that you have in front of
24 you, you would have to conclude that there is

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1 no correlation, wouldn't you?
2 A. I can't make any conclusions, not having ever
3 done that comparison.
4 Q. Was it not of interest to you, Doctor, to try
5 to find out whether or not these ads affected
6 people's attitudes about smoking?
7 A. Yes.
8 Q. Because at the very top of your article -- did
9 you write this caption, or did the people at
10 JAMA do that?
11 A. I wrote that.
12 Q. You wrote the caption "RJR Nabisco's Cartoon
13 Camel Promotes Camel Cigarettes to Children."
14 Were you ever interested in whether or not
15 your data showed that there was a correlation
16 between whether or not people liked the
17 cartoon and had positive attitudes towards
18 smoking?
19 A. Actually I didn't write the caption. I
20 thought you meant the abstract.
21 Q. You did the abstract, but the editors did the
22 caption?
23 A. Yes, the title.
24 Q. Do you disagree with the caption?

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A. No. You want to restate your question?

Q. Did you ever try to determine whether or not the Old Joe Camel advertising campaign caused children to change their attitude about smoking or whether --

A. About smoking per se?

Q. About whether it makes you more popular or more attractive. That's the information you had.

MS. CUNEO: Is the question about smoking or whether it makes you more popular and attractive?

MR. DONAHUE: Appeal. The question is if a child finds the ad appealing is he more likely to think cigarette smoking makes him attractive and popular?

Q. My understanding is you didn't do that analysis.

A. We didn't do that analysis.

Q. Why not? Not important?

A. It wasn't one of our hypotheses in this particular study. There have been other studies done that have answered that question about whether cigarette advertising influences

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1 children's attitudes, but that was not what we
2 were trying to determine with this particular
3 study.
4 Certainly there's a very high correlation
5 between whether the kids thought that smoking
6 would make them more popular and whether they
7 thought the ads were cool, for instance.
8 Q. Is that certainty borne of your bias, or is
9 that a certainty borne of scientific integrity
10 and research --
11 MS. CUNEO: Objection.
12 Q. -- or is it a certainty borne of your
13 familiarity with the literature?
14 A. Familiarity with this data.
15 Q. This data being your data or data in general?
16 A. My data.
17 Q. It's subject to being analyzed; you just
18 haven't done it?
19 A. Right.
20 MR. DONAHUE: I don't have any other
21 questions. Thank you.
22 (Luncheon recess taken)
23 MR. DONAHUE: Could we mark that as
24 Exhibit 18, please.

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1 (Exhibit No. 18, Handwritten Notes,
2 marked for Identification)
3 CONTINUED DIRECT EXAMINATION BY MR. DONAHUE
4 Q. How could we contact Allison MacMillan?
5 A. I think I have her phone number at work, at my
6 office.
7 Q. Do you know what city she lives in?
8 A. No, I don't remember where.
9 Q. The area, you said she lived in the same town
10 as the school where you did the research. I
11 don't necessarily care about the school. In
12 fact, I'd rather not know about the school.
13 But can you tell me what the town is? I hope
14 there's more than one high school.
15 A. I'm not trying to keep her a secret. Why
16 don't I ask her to contact you. Is that
17 fair?
18 Q. If she doesn't want to contact us, there's no
19 way to get up with her. The concern I have
20 honestly stated is over the extent to which
21 you and she may have had discussions and
22 conversations both before and after she did
23 her work.
24 The record will speak for itself, but I

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1 have a recollection of you telling me on one
2 occasion that you were interviewed by
3 telephone and you only talked to her once by
4 telephone, and then you also said she gave you
5 some materials. So obviously there was at
6 least one face to face.
7 A. I had said that she was in my office for about
8 an hour.
9 Q. In this Exhibit 16 there's a column under
10 "Impressions of Picture," four columns. The
11 first one says "penis or sex"?
12 A. Yes.
13 Q. "George Washington; encouraged to smoke;
14 cancer, death" --
15 A. Stupidity.
16 Q. -- "stupidity." What does all that mean, if
17 you know?
18 A. I believe she showed the pictures and then
19 just asked them to write in what they thought
20 about it or what it made them think of.
21 Q. Did she tell you that's what she did?
22 A. Yeah.
23 Q. Did she prompt them with these four categories
24 and say which of these four categories, or do

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1 you know?
2 A. No, I don't think she did.
3 Q. Have you, other than the time we've been
4 together during the course of deposition and
5 the time we were together last time during the
6 course of deposition, had any discussions with
7 counsel for R.J. Reynolds in the Mangini case
8 or counsel for the plaintiff in the Mangini
9 case about your testimony?
10 A. About this testimony?
11 Q. Yes.
12 A. I didn't have any contact with your
13 attorneys. We tried to avoid speaking on the
14 specifics.
15 Q. Did you have any contact with any attorney
16 representing the plaintiffs in this case?
17 Have you up to until right now?
18 A. Attorney Cuneo.
19 Q. Pardon me?
20 A. We've had lunch together twice.
21 Q. With Ms. Cuneo?
22 A. Cuneo.
23 Q. I ran into you at lunch. You were having
24 lunch together. During the course of lunch

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1 did you discuss the substance of your
2 testimony, or did you just pass the time about
3 the weather and that sort of thing?
4 A. No. I told them a couple of things I wanted
5 them to ask me.
6 Q. What did you tell them you wanted them to ask
7 you?
8 A. You'll hear them in a few minutes.
9 Q. I can hear them right now. That's not a
10 privileged communication. What did you tell
11 them you wanted them to ask you?
12 A. I wanted her to ask me about your calculation
13 with the 16 percent.
14 Q. What did you say you wanted her to ask you?
15 A. Ask me to talk about that.
16 Q. Just generally?
17 A. Yeah.
18 Q. Ask me a question and let me go sort of thing?
19 A. Yeah.
20 Q. What else?
21 A. About the new users controversy, whether we
22 were misquoting the document.
23 Q. The Canadian Ad Ban document?
24 A. Yes.

http://legacy.library.ucsf.edu/tid/eir07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/jqxl0001

1 Q. What did you tell her you wanted her to ask?
2 A. Ask me about that so I can explain it.
3 Q. Explain it to me.
4 MR. GREER: That's not a question.
5 Q. Do you feel as though the testimony is
6 accurate on that issue?
7 A. I feel like there's more information I could
8 give.
9 Q. Why don't you give me more information.
10 That's what we're here for, to get the facts.
11 MS. CUNEO: I'm going to object to that.
12 That's an overly broad question.
13 Q. Is there more information that you would like
14 to give us on the Canadian Ad Ban documents?
15 You told Ms. Cuneo to ask you a question. All
16 I want to know is what you wanted to say.
17 A. That document is a big document, if I remember
18 correctly. All these documents were many
19 pages. And it's my belief that that page that
20 you showed was a summary and that the same
21 information appears elsewhere in a little bit
22 different format. That's probably some other
23 page I was quoting and not the page that you
24 produced from the document.

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1 Q. You had a concern that we were selectively
2 picking and choosing from among the pages in
3 the document and showing you only the ones we
4 wanted you to see?
5 MS. CUNEO: Objection. Characterizing.
6 MR. DONAHUE: I'm just asking if that's
7 his concern.
8 A. I wouldn't speculate as to your motives.
9 Q. What else -- while I try to find my Canadian
10 Ad Ban file, what else did you want her to ask
11 you?
12 A. I think that's all we talked about at lunch.
13 Q. Did you write out any questions for her to ask
14 you?
15 A. Yes.
16 Q. Where are they?
17 A. On her side of the table.
18 Q. Could we have them marked as an exhibit,
19 please? Where are they?
20 MS. CUNEO: I don't have them.
21 Q. Do you have them, Doctor?
22 A. I showed them to my lawyer.
23 Q. Don't tell me what you told only to your
24 attorney. That's privileged.

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1 A. She didn't want to see anything.
2 Q. I only want to know what you told the attorney
3 that represents the Manginis in this case.
4 Did you write out some questions for her to
5 ask you?
6 A. What we had just talked about, the discussion
7 with my lawyer, she happened to overhear the
8 conversation.
9 Q. She was there when you were talking to your
10 lawyer?
11 A. Yes.
12 Q. Tell me the nature of the conversation.
13 A. That was the basic sort of thing.
14 MS. CUNEO: I think that question has
15 been asked and answered.
16 MR. DONAHUE: No, it hasn't.
17 Q. Is there anything else in the conversation you
18 had with plaintiff's counsel other than what
19 you told us here today?
20 A. Nothing at all relevant to the case here.
21 Q. Just passing time of day?
22 A. That's right.
23 Q. Would you agree to give Allison MacMillan's
24 phone number to Mr. Greer?

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1 A. Yes.
2 Q. You don't mind if Mr. Greer gives it to
3 Mr. Wood?
4 A. I'll have to ask Allison whether she wants her
5 name or her phone number -- you got her name,
6 but whether she wants her phone number
7 disclosed. If it's all right with her, it's
8 all right with me.
9 Q. You did handwrite out some questions that you
10 wanted asked, isn't that right?
11 A. Yes.
12 Q. You gave them to Mr. Greer?
13 A. Hm-hm.
14 MR. DONAHUE: Ms. Cuneo, you don't have
15 them?
16 MS. CUNEO: No.
17 MR. DONAHUE: Could you mark this please
18 the next suceeding exhibit.
19 (Exhibit No. 19, Preliminary Back
20 Schedule, marked for Identification)
21 Q. Dr. DiFranza, I will hand to you a document,
22 multi-page document, marked as Exhibit
23 No. 19. I will direct your attention to the
24 page that's No. 8023 0289 which is the "Whose

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1 behaviour are we trying to affect?"
2 A. Do you remember which reference that was?
3 Q. What's your footnote number?
4 A. I think it's 37. Is that the "Youth '87"?
5 Q. Footnote number what? 48, isn't it?
6 A. 48, Export A Brand, Long Term Strategy.
7 Q. This is identified "Preliminary Back
8 Schedule," and has that page identified for
9 you.
10 A. That's not the same document that I have.
11 Q. You have the one, though, in your office,
12 right? If it's one that we mischaracterize,
13 I'm sure you'll be among the first people to
14 let us know, won't you?
15 A. The page that you had shown me before comes
16 from this document which I've never seen
17 before.
18 Q. So you haven't seen that before?
19 A. No. My quote was taken from a different
20 document.
21 Q. You have received, I think you said earlier, a
22 letter from Carl Irving, who is counsel for
23 RJR MacDonald?
24 A. That is correct.

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1 Q. His letter identified, did it not, the
2 RJR McDonald document from which this quote
3 came and identified it as a misquote, did it
4 not?
5 A. I don't recall.
6 MS. CUNEO: Asked and answered.
7 Q. But at any rate, you have the ability to go
8 back and find that article -- excuse me --
9 that letter from Mr. Irving?
10 A. I believe I saved it.
11 Q. If you don't have it, I'll get you another
12 copy. Dr. DiFranza, if you believe that we
13 have mischaracterized in any way the Canadian
14 Ad Ban document and that we have not made
15 available to you the ones that you need in
16 order for your testimony to be complete and
17 accurate, you be sure to let us know and we'll
18 give you a chance because we want accurate and
19 complete testimony.
20 MS. CUNEO: I just have a question to
21 clarify the record. Are the Canadian Ad Ban
22 documents under seal?
23 MR. DONAHUE: I don't personally know.
24 I've been told by our Canadian counsel that

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1 some, if not all of them, are.

2 MS. CUNEO: You're not saying that if

3 necessary you will turn those documents over?

4 MR. DONAHUE: I said I'd give him the

5 one that he referred to. He cited in his

6 article --

7 MS. CUNEO: I understand.

8 MR. DONAHUE: -- Footnote 48, a document

9 which he said contained the language "Whose

10 behavior are we trying to affect?: new

11 users." I will represent to you we cannot

12 find an RJR MacDonald advertising document

13 that doesn't have the language in between

14 those that I've quoted.

15 If there is one, when you show us we're

16 wrong I will apologize.

17 A. If that's under court order, I can't --

18 Q. If you had it, Doctor -- didn't you have it?

19 You said you had it at one time.

20 A. Yes, I do have that. This is -- the document

21 that we had discussed at length earlier was

22 not the document that I was quoting from.

23 Many of these documents don't have specific

24 identifiers on them.

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1 Q. That may be the problem here. I will tell you
2 that if you don't have the document that you
3 say you had at one time, you told us that you
4 had at one time, we'll get you another copy.
5 We just want to be sure.
6 A. I have all of them at my office.
7 Q. Okay, fine. You'll let Mr. Greer know if you
8 have been able to find the Canadian Ad Ban
9 document that does not have between the word
10 "affect?" and the words "new users" the text
11 "Demographics: Adults - males (predominantly
12 - females (must not be excluded). 18 - 34;
13 Emphasis 18 - 24." You'll let us know if
14 there was such a document?
15 MS. CUNEO: You've already read that into
16 the record once. You made your point.
17 Q. I think I just quite frankly forgot to ask you
18 before. It's a follow-up to what we were just
19 talking about, Page 3152 of your article, top
20 right-hand corner, "The average age for
21 starter smokers is 13 years." You see that?
22 A. Yes.
23 Q. You received a note from a peer reviewer about
24 that, did you not?

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1 A. I did.
2 Q. The peer reviewer pointed out to you that was
3 one of the most widely misused statistics in
4 the area of smoking analysis, did he not?
5 A. He did.
6 Q. He told you that the correct number was 18
7 years and cited a Surgeon General's report, is
8 that correct?
9 A. That was a misunderstanding.
10 Q. That's what he told you, isn't that correct?
11 A. That's what he told me.
12 Q. Then you responded that what you meant was
13 average age of experimentation?
14 A. For first use.
15 Q. Or experimentation, correct?
16 A. Yeah.
17 Q. You didn't mean that average age for people
18 who started and continued was 13, correct?
19 A. He was citing figures for the onset of regular
20 smoking, and I was citing figures for the
21 onset of first use of tobacco.
22 Q. So when you made the statement in your
23 article, "The average age for starter smokers
24 is 13 years," what you were trying to tell the

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1 scientific and other community is that's the
2 average age when people begin to experiment,
3 but they may start regular use at a far later
4 age, is that correct?
5 A. That's true.
6 Q. But you didn't put that in there, did you?
7 A. I said "for starter smokers," and the
8 quotation is, and people can look up the
9 reference, which is a very widely quoted
10 survey by the University of Michigan in which
11 to find just what they mean by starting to
12 smoke.
13 Q. It's true, Doctor, is it not, that many
14 starter smokers stop and don't continue on to
15 become regular, is that true?
16 A. That's true.
17 Q. You didn't intend in your article then to
18 convey the impression that people begin
19 smoking regularly at 13 years?
20 A. No.
21 Q. But rather they experimented at age 13 and may
22 or may not continue on?
23 A. The average age for beginning of
24 experimentation is 13.

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1 Q. Did you say beginning experimentation?
2 A. Average age for starter smokers. That's what
3 Reference 50 is, first use.
4 Q. Reference 50 is to a NIDA report, right?
5 A. That's right.
6 MR. DONAHUE: Doctor, thank you very much
7 for your time. We don't have anything else.
8 CROSS-EXAMINATION BY MS. CUNEO
9 Q. Dr. DiFranza, can you state for the record
10 your medical training?
11 A. I'm a graduate of the University of
12 Massachusetts with a degree in psychology.
13 I've graduated from the University of
14 Massachusetts Medical School with a degree in
15 medicine. I've completed a three-year
16 residency program in the field of family
17 medicine and have become board certified in
18 the field of family practice. I then went on
19 and did a one year fellowship in faculty
20 development with an emphasis on research.
21 Q. How long have you been doing survey research?
22 A. I've been doing research in this area for
23 about 12 years.
24 Q. How extensively have you been doing research

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1 -- strike that. Is survey research the main
2 thing that you do these days?
3 A. My research almost exclusively deals with
4 survey research, and about 50 percent of my
5 professional time is devoted to my research.
6 Q. How many previous surveys of yours have been
7 published?
8 A. I'd say at least a dozen.
9 Q. In what areas?
10 A. All of my research is in -- well, almost all
11 my research has been in the area of tobacco.
12 I did one study on pregnant women. But almost
13 all the rest is with tobacco.
14 Q. Would you say you are a recognized authority
15 in this area?
16 A. I would.
17 Q. I want to turn to your JAMA article. Can you
18 explain to me what grants you got for this
19 article?
20 A. This was supported by a grant from the
21 Massachusetts Chapter of the American Cancer
22 Society -- I guess Massachusetts Division is
23 their term -- a grant from the University of
24 Massachusetts Medical Center, and a small

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1 grant from Doctors Ought to Care.
2 Q. How did you go about applying for each of
3 these grants?
4 A. The Doctors Ought to Care money came in as
5 donations from other researchers before we had
6 formal funding from other sources. The
7 American Cancer Society grant and the
8 University of Massachusetts grant were both
9 formal grant proposals which were submitted,
10 and then they were subjected to peer review
11 with experts selected by those two
12 organizations to determine the merit of the
13 research, and both organizations approved the
14 proposal.
15 MR. DONAHUE: Ms. Cuneo, the stipulation
16 is under California practice all of the
17 objections are reserved except as to form.
18 MS. CUNEO: Yes, that was my
19 understanding from the last deposition.
20 MR. DONAHUE: Sure. Relevancy objections
21 and that sort of thing are observed.
22 MS. CUNEO: Hm-hm.
23 Q. Do you know by whom your applications were
24 reviewed?

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1 A. I do not. The applicant does not know who
2 does the reviewing.
3 Q. Do you know how many peer reviewers reviewed
4 each of your applications?
5 A. I would only be conjecturing. Usually
6 granting agencies will send proposals to two
7 or three, sometimes more, reviewers.
8 Q. Do you know what the criteria for the receipt
9 of grants are with respect to organizations to
10 whom it is submitted, the applications?
11 A. You have be a professional. You have to be
12 associated with an institution. An individual
13 cannot apply. You have to have expertise,
14 proven expertise in the field. You have to
15 instill confidence in the reviewers that you
16 will be able to conduct the proposed
17 research. The research design, the study
18 design must be capable of answering the
19 hypotheses that are put forth.
20 Q. Is that how the grantors ensure that the study
21 will be valid?
22 A. That's correct.
23 Q. With respect to the actual article that you
24 submitted to the Journal of the American

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1 Medical Association, how does the review
2 process for JAMA work?
3 A. The article is submitted to JAMA. The
4 editorial staff determines whether the subject
5 matter is appropriate for their audience. And
6 if they deem it so, then they will send it off
7 with other articles. Usually they'll send it
8 off to two or three independent researchers
9 with expertise in the field.
10 I believe JAMA has a blinded review
11 process whereby anything that would identify
12 the author of the study is removed from the
13 versions that are sent out to the reviewer so
14 that they can't say, well, we'll pass this one
15 because I know the person. They have to be
16 objective and judge the study purely on its
17 merits and not on who has performed the
18 study.
19 I know in regards to this particular case
20 the editorial board decided that because the
21 article would be subjected to such scrutiny
22 once it was published that they would send it
23 out to twice the usual number of reviewers,
24 and that's what they did.

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1 Q. What were the conclusions of those reviewers?
2 MR. DONAHUE: If he knows.
3 A. JAMA supplies the authors with feedback
4 written by the reviewers for the eyes of the
5 authors, and I received some of those. They
6 also provide feedback to the editors which is
7 confidential. I assume since the article was
8 published that the reviews were positive.
9 They had several suggestions as to minor
10 changes that could be made in the article, but
11 none were of any substance. Most were merely
12 grammatical.
13 Q. So did you not receive through JAMA, from the
14 peer reviewers, any criticism of your study
15 design or its conclusions?
16 A. No.
17 Q. Does the Journal of the American Medical
18 Association stand behind the accuracy of the
19 articles they print?
20 A. It does. And the editorial staff has, since
21 the controversy surrounding Joe Camel has
22 arisen, has made a public statement that they
23 stand behind this article.
24 Q. It's my understanding that RJR after the

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1 publication of your article wrote to the
2 Journal of the American Medical Association,
3 is that true?
4 A. That is correct.
5 Q. Did JAMA then give that letter to you? You've
6 seen it?
7 A. Yes, they did.
8 Q. Does that letter in any way impugn your study
9 or its conclusions?
10 A. Not at all.
11 MR. DONAHUE: Do we have the letter?
12 MS. CUNEO: I do not have the letter.
13 MR. DONAHUE: You don't have it?
14 THE DEPONENT: I don't have it.
15 MS. CUNEO: I'm sure you've got it.
16 MR. DONAHUE: I don't have it personally,
17 but I don't disagree with anything you said.
18 I guess a copy was kept. Does he know who
19 signed it?
20 THE DEPONENT: No.
21 MS. CUNEO: Why don't you ask these
22 questions.
23 MR. DONAHUE: I will. I'm sorry.
24

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1 CONTINUED CROSS-EXAMINATION BY MS. CUNEO

2 Q. If one were to wish to refute the findings of
3 your article, in your opinion what would be
4 the most effective way to do that?
5 A. The traditional scientific method for refuting
6 a study is to repeat it and to see if the
7 results are repeatable. Any time a study is
8 published one of the criteria, very important
9 criteria, is that the methods that are used be
10 described in enough detail that an independent
11 research team could repeat the study to see if
12 they obtain the same results.
13 Q. To your knowledge has RJR attempted to repeat
14 your study?
15 A. To my knowledge RJR has not made any attempt
16 to repeat the study.
17 Q. Has anyone else attempted to repeat your study?
18 A. The study has been repeated, at least in part,
19 by Allison MacMillan.
20 Q. Are you aware of any other tobacco industry
21 studies that have been undertaken to refute
22 your study?
23 A. No, I'm not. To my knowledge one of the
24 spokesmen for the tobacco industry said they

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1 wouldn't do such a study because they would be
2 accused of trying to find out what makes
3 children smoke or something to that effect.
4 So to my knowledge they have no plans of
5 attempting to repeat the study or of asking an
6 independent research team to repeat the
7 study.
8 Q. Going back to the first day of your
9 deposition, it's my understanding there was
10 some discussion concerning some pilot testing
11 that you did, I believe, a second pilot test?
12 A. That's correct.
13 Q. What is the purpose of pilot testing?
14 A. The purpose of pilot testing may differ from
15 study to study, but our pilot test was
16 conducted for two reasons. One was to see if
17 the questions as worded on the questionnaire
18 were understandable to the subjects who would
19 be filling out these questionnaires. That's
20 especially important when one is dealing with
21 children.
22 And the second purpose was to estimate
23 how many subjects you would need in a final
24 study to make sure that the results were clear

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1 cut.
2 Q. So the purpose of the pilot study was not to
3 find out whether Joe Camel ads were more
4 effective with 18 to 24 year olds than with
5 children under 18, was it?
6 A. Not at all.
7 Q. Earlier today you were asked some questions
8 about a New Zealand study concerning the
9 effects of cigarette advertising, do you
10 recall that?
11 A. Yes.
12 Q. In your article you relied on that New Zealand
13 study, isn't that right?
14 A. That's correct.
15 Q. Can you explain to us your reasons for relying
16 on that study?
17 A. The New Zealand study compared, I believe, 30
18 to 35 different countries around the world
19 which have different policies restricting or
20 not restricting tobacco advertising and
21 promotion, and this study is -- I relied on it
22 because it was the largest study and the most
23 comprehensive study done on this subject.
24 There had been some done earlier which

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1 compared only one or two or maybe a handful of
2 countries on their advertising policies and
3 what was happening with teenage smoking. The
4 problem with very small studies on this
5 subject is that countries vary on very many
6 variables in addition to their smoking
7 policies, their advertising policies.
8 They may differ dramatically in their
9 taxation policies of tobacco. They may differ
10 on whether or not it's legal for children to
11 smoke or to purchase tobacco. They may differ
12 in societal attitudes towards tobacco use. So
13 there are very many different factors that
14 vary from one country to another which might
15 influence teenage smoking rates.
16 So it's important when one's considering
17 the effects of this particular policy towards
18 advertising to have a study which includes as
19 many countries as possible. And to my
20 knowledge the New Zealand study is the largest
21 of its type and, therefore, from my viewpoint
22 most likely to be the most reliable.
23 The World Health Organization --
24 Q. Let met just get to the World Health

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1 Organization.

2 MR. WOOD: Let the record show the

3 witness is leading himself.

4 Q. I have not been able to examine the World

5 Health Organization study. It is Exhibit 13.

6 It's dated 1986. Did you get a chance to look

7 at it at all?

8 A. No.

9 Q. From what was read into the record, it's my

10 understanding that this is basically a side

11 bar reference to two countries, Norway and

12 Finland, and the record is clear as to what

13 was said. Would you feel comfortable relying

14 on the language that was read into the record

15 for your study?

16 A. No.

17 Q. Why is that?

18 A. Well, my understanding is that the study

19 wasn't conducted to compare the effects of

20 advertising.

21 Q. Let me just state for the record it's called

22 "Health Behaviour in School Children." It's

23 not directed directly towards smoking.

24 A. The study is only of a small number of

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1 countries. I think it was poor altogether,
2 and it's also fairly old. I believe it's
3 1983. So it's nine years old. The New
4 Zealand study by comparison has at least 35
5 countries, and it was done just within the
6 last year or two. So I would consider the New
7 Zealand study to be much more reliable.
8 In addition, I believe that the World
9 Health Organization has subsequently come out
10 with a recommendation that all advertising
11 promotion of tobacco be banned completely
12 throughout the world. So I would say that
13 whatever this old document shows it does not
14 reflect the current view of the World Health
15 Organization.
16 Q. Now, moving on to your article, I think it's
17 Page 3151, and the 45 subjects who were not
18 included to reach your 33 percent, down at the
19 bottom of the second to last column on top of
20 Page 3151. It's my understanding that they
21 were left out because they did not indicate a
22 brand preference, is that right?
23 A. That is correct.
24 Q. Could you explain to me again why they were

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1 left out? Why is it important to leave them
2 out if they hadn't expressed a brand
3 preference?
4 A. With any questionnaire format, we can only
5 state the proportion of subjects who believe
6 one way based on how many people respond. Can
7 I strike that? It didn't make any sense.
8 If you look at the chart at the top of
9 Page 3151, "think ads look cool," for
10 instance, that's 62.4 percent of the Georgia
11 students who answered that question thought
12 that the ads looked cool. "Ads are
13 interesting," 83.4 percent of the Georgia
14 students who answered that question indicated
15 that the ads where interesting.
16 A researcher has no way at all of knowing
17 what the people who do not answer the question
18 would have answered had they answered. So to
19 include those people is making a huge
20 assumption.
21 Q. Let me just ask you, if you had included them
22 as all showing a preference, it would have
23 made a difference of 4 percent maybe?
24 A. It would have made a small difference. And if

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1 we assume that none of them smoke Camels,
2 again, I believe before we came out to about
3 28 percent.
4 Even making that assumption, that would
5 have absolutely no effect on our overall
6 conclusion of this article, which is that
7 Camel use among children has increased
8 dramatically from less than 1 percent to what
9 we measure in this study.
10 Now, whether that's 28 percent or 33
11 percent, is really a moot point because in
12 either case 28 percent is at least a 28 fold
13 increase.
14 Q. By the same token, you were questioned quite
15 lengthy on your assumption, the adult market
16 share that you had calculated yourself versus
17 a 1986 market share of 4 percent, is that
18 correct?
19 A. That's correct.
20 Q. It's my understanding you were asked on
21 numerous occasions what difference this would
22 make, and I believe the defendants in this
23 case have prepared a chart showing the detail
24 of what difference this would make. It's

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1 Exhibit 15.

2 I guess my question to you is, even

3 assuming that there is a small difference in

4 the share of adults smoking Camels this still

5 shows a huge increase in the share of youths

6 under 18?

7 A. Yes. Even if one were to make the assumption

8 that our calculations were off by a factor of

9 two and that the actual portion of children

10 who were smoking Camels is 16 percent rather

11 than 32.8 percent, still 16 percent would be

12 at least a 16 fold increase over the

13 proportion of children who were smoking Camels

14 before these cartoon characters came out.

15 So even based on this assumption, which I

16 do not agree with, this would still be very

17 damning evidence that these cartoon

18 advertisements are causing children to smoke

19 Camels.

20 Q. The 1986 adult data came out prior to the

21 inception of the Joe Camel ads?

22 A. The Joe Camel ads were initiated at the very

23 beginning of 1988. So this survey was taken

24 in a different time era as far as cigarette

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1 advertising is concerned and would be
2 irrelevant to what we are trying to determine
3 here.
4 Q. Further on in your deposition this morning you
5 were asked questions about, I believe, and
6 please correct me if I'm mischaracterizing
7 your testimony, the statistical population
8 that you used for your statement about smoking
9 being more attractive. I think that's on Page
10 3151.
11 A. Yes.
12 Q. Referring to Pages 75 and 76 of Exhibit 3,
13 could you clarify for me which questions you
14 used?
15 A. Can I have that Exhibit 3?
16 (Document handed to deponent)
17 Q. And what responses to the questions you used.
18 A. The questions we used to investigate this
19 particular area were Questions 23 and 24 in
20 which asks the subjects to indicate whether
21 they plan to smoke cigarettes a month from now
22 or a year from now. And if I may, I'd like to
23 put this into context.
24 MR. DONAHUE: Is that the question you

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1 wanted her to ask?

2 MS. CUNEO: Don't respond to that.

3 MR. DONAHUE: I just can't help but

4 notice he's got his little piece of paper

5 already to go.

6 A. The research that had been done in the area of

7 smoking and children in advertising applied to

8 our study had indicated there was a very high

9 correlation between children's attitudes about

10 smoking and cigarette advertising and their

11 actual smoking behavior. And many people

12 believe that this indicates that advertising

13 and positive attitudes towards smoking is what

14 led these children to become smokers.

15 The opposing argument in this case was

16 that children first start to smoke and then

17 only after smoking do they become aware of

18 cigarette advertising, and perhaps in an

19 attempt to rationalize an irrational behavior

20 the children, after they've begun to smoke,

21 develop positive opinions about what smoking

22 does for their social attractiveness.

23 So the question then becomes which comes

24 first, the smoking or the positive attitude

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1 towards smoking. So a segment of this study
2 was designed to answer that particular
3 controversy. And what we wanted to see was if
4 you could find kids who were not smoking but
5 who were your future smokers, you could
6 compare those children to children who would
7 never smoke and see if these favorable
8 attitudes towards smoking and advertising
9 preceded this smoking behavior.
10 Previous research study had shown the
11 best predictor of whether or not a child will
12 become a smoker is to ask them whether they
13 plan on smoking. So that's what we did in
14 these two questions.
15 When we went to analyze the data, it
16 became a question of where do the people who
17 neither agree nor disagree fit. These people
18 who are students who are ambivalent about
19 their smoking, they don't plan on smoking but
20 they don't plan on not smoking either, where
21 do these kids who are right on the fence,
22 what's going to happen to them. Are those the
23 kids who are going to smoke, or are those the
24 kids who aren't going to smoke.

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1 To determine that we added up what
2 percents of children answered in each
3 category. What we found, for instance, with
4 planned to smoke in the next year, solely
5 talking about long term plans eventually to
6 smoke, only 3 percent of all the students,
7 smokers and nonsmokers, said they strongly
8 agreed they were going to smoke within the
9 next year.
10 We found that an additional 4 percent
11 agreed that they were going to smoke in the
12 next year. So if you add those up, you only
13 have 7 percent of all the students interviewed
14 who believe that they're going to be smokers.
15 But we know that that's impossible because we
16 know that at least 18 percent of high school
17 seniors are smoking by the time they graduate
18 and that if you count the kids who start and
19 then quit before they graduate it's probably
20 up about 25 percent of kids who will at one
21 time be smokers. And, yet, when you ask them
22 whether they plan on being smokers, only 7
23 percent will definitely say yes.
24 But what we found was if we included

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1 those kids who were sitting on the fence in
2 with those kids who were definitely planning
3 on smoking, that brought the total up to 24.5
4 percent, and that seems to be just what we
5 would expect.
6 So if you include those first three
7 categories, those who strongly plan on
8 smoking, those who plan on smoking, and those
9 who are ambivalent, it adds up to 24.5 percent
10 of all the students which from all the surveys
11 I've seen correlates very highly with the
12 actual number of students who will eventually
13 start to smoke. And that's why we included
14 those ambivalent students in with those who
15 were definitely planning on smoking.
16 MS. CUNEO: Let me just state for the
17 record that the statement of counsel before,
18 RJR's counsel, and his insinuations, I was not
19 asked to ask that question, and we had no
20 discussions about it nor was that chart
21 prepared. I have not seen the chart to which
22 the deponent is referring to.
23 MR. DONAHUE: My inference was that the
24 doctor wanted very badly to put it on the

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1 record. That's all.

2 MR. GREER: You don't --

3 MS. CUNEO: Your inferences change

4 according to the last question asked.

5 MR. GREER: You don't disagree that it's

6 preferable that Dr. DiFranza be permitted to

7 articulate what his position is on the

8 issues?

9 MR. DONAHUE: I think we've tried to make

10 it clear throughout that we want an accurate

11 and complete deposition transcript.

12 MS. DUNEO: I have no further questions.

13 I'd like to reserve the right to go through my

14 notes.

15 MR. DONAHUE: That's fine with me.

16 CROSS-EXAMINATION BY MR. GREER

17 Q. Dr. DiFranza, could you tell me approximately

18 how much the total cost was of the research

19 associated with your article?

20 A. I think it was about $12,000.

21 Q. Approximately how much would it cost for

22 RJR Reynolds to replicate the study if they

23 were seriously interested in determining

24 whether it was accurate or not?

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A. Probably about $6,000 because half the cost went to buying a machine that would be used for future research.

Q. Pursuant to court order, R.J. Reynolds is paying you several thousand dollars for testifying about this study which they could replicate themselves for a total of $6,000, isn't that true?

MR. DONAHUE: $250 an hour, is that right?

THE DEPONENT: That's correct.

Q. Did you notice that in the course of these two days of deposition RJR Reynolds' attorneys were flown in from all over the country, including from North Carolina and California and other places?

A. I did.

Q. And you have a rough idea as to how much plane tickets cost, don't you, Doctor?

A. I do.

(There was a discussion off the record)

Q. So really it would be fair to say that it would have been a lot cheaper for R.J. Reynolds to check out the accuracy for

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1 what you did on its own rather than wasting
2 everybody's time here in this deposition,
3 wouldn't it?
4 A. It would have.
5 MR. WOOD: As is now being done, right.
6 MR. GREER: That's it. I don't have any
7 further questions.
8 (There was a discussion off the record)
9 REDIRECT EXAMINATION BY MR. DONAHUE
10 Q. Doctor, that assumes that your survey protocol
11 is capable or a close approximation of it is
12 capable of producing results that bear any
13 reasonable resemblance to reality, isn't that
14 correct?
15 A. That's correct.
16 Q. You received from JAMA notes from two peer
17 reviewers, correct?
18 A. That's correct.
19 Q. At Pages 82 to 85 of Exhibit 3, the notes are
20 contained in there, is that correct?
21 A. What pages?
22 Q. 82 to 85.
23 A. Yes.
24 Q. You heard from two peer reviewers that's twice

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1 their usual rigorous peer review process,
2 correct?
3 A. No, I didn't say that. I said that I think
4 three is a usual peer review process. They
5 told me they sent it out to twice as many.
6 They forwarded the comments of two of those
7 reviewers to me.
8 Q. Ms. Cuneo asked you a couple of questions
9 about the intended purpose of pilot testing.
10 And do I understand that your testimony was
11 that the purpose of pilot testing is to refine
12 the protocol so the methodology and protocol
13 is appropriate to address the issues at hand?
14 MS. CUNEO: Objection. Characterizing
15 his testimony.
16 Q. Is that right? If it's wrong, tell me it's
17 wrong.
18 A. That's not what I said, but that is the
19 purpose of pilot testing.
20 Q. What did you say?
21 A. I said we wanted to refine the questions and
22 make sure the children understood them.
23 Q. To refine the protocol in order to be able to
24 address the issues, correct?

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1 A. Yeah. That's a general statement.
2 Q. During the course of this refining process,
3 Doctor, during the time you were gathering
4 some data and testing the appropriateness of
5 the protocol, you sent a letter dated November
6 11, 1990, to your co-researchers. It appears
7 in the packet of material in front of you as
8 Pages 102 and 103.
9 It says, "Dear Co-Investigators" at the
10 very beginning, dated November 11.
11 A. What page?
12 Q. Page 103 and 104. I'm sorry. "Dear
13 Co-Investigators," letter dated November the
14 11th. You discussed some of the things that
15 you had done in the pilot testing, and then at
16 the top of Page 104, say at the end of that
17 paragraph, "It would appear that we have just
18 disproved our theory that the ads appeal more
19 to kids than to adults." You made that
20 statement, didn't you?
21 A. I made that statement.
22 Q. Then you continued to refine your test
23 protocol, didn't you?
24 A. Yes, we did.

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1 Q. The New Zealand Toxic Substances Board report
2 that you expressed such great confidence in --
3 A. Yes.
4 Q. You're aware that it was discussed during the
5 course of litigation in the Canadian Ad Ban
6 case?
7 A. Yes. You've already read that. I did read
8 it, the judge's opinion.
9 Q. Since it was brought back up on cross and you
10 expressed such confidence in it, Doctor, you
11 are aware of the fact that the judge who heard
12 several weeks of testimony from a number of
13 expert witnesses relative to that report did
14 find, among other things, that the document
15 was of no probative value, correct?
16 MS. CUNEO: Objection. Asked and
17 answered.
18 Q. Did you read that part?
19 MS. CUNEO: You read the entire thing
20 into the record.
21 A. Yes.
22 Q. Do you have any reason to believe that
23 Judge Chabot, C-H-A-B-O-T, somehow is so
24 biased that he's incapable of objectively and

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1 independently --

2 MS. CUNEO: Objection.

3 MR. GREER: Objection.

4 MR. DONAHUE: I'm asking him if he has

5 any reason to believe that he is so biased

6 that he is incapable of listening to the

7 evidence and drawing a conclusion with

8 reference to that report.

9 MS. CUNEO: Objection. Asked and

10 answered.

11 MR. GREER: He's not going to answer that

12 question.

13 MR. DONAHUE: He can say whether or not

14 he has reason to believe.

15 MS. CUNEO: On what is he supposed to

16 base that?

17 MR. DONAHUE: That's precisely my point.

18 Do you have any --

19 MS. CUNEO: Does he know that the judge

20 is a chain smoker?

21 MR. DONAHUE: Better question. Better

22 question. Ms. Cuneo gave me a better

23 question.

24 Q. What basis do you have to form a belief, if

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1 you have one, that Judge Chabot was biased in
2 his review and analysis of the toxic
3 substances board report?
4 A. I'm not saying that he was biased. I'm saying
5 I disagree with his opinion. I don't know
6 which medical school the judge went to or --
7 Q. Or what medical school the witnesses he heard
8 went to.
9 A. Correct, or what evidence was allowed in
10 testimony and which was not.
11 Q. Fair enough. Do you know, Doctor, of any
12 adult brand preference survey from any source
13 and dated at any time from 1986 to the present
14 which indicates an adult preference for Camel
15 brand cigarettes less than a market share of
16 4.0?
17 A. You're asking me two questions. You're asking
18 me whether I know of any adult brand
19 preference surveys conducted since 1986.
20 Q. Which shows that the adult preference for
21 Camel brand cigarettes is less than 4.0.
22 MS. CUNEO: The witness has very ablely
23 objected. That's a compound question. Lack
24 of foundation.

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1 A. Right at this moment I don't recall seeing any
2 adult brand preference surveys published since
3 1986. The Maxwell report reports on total
4 market share, but that's not an adult brand
5 preference survey.
6 Q. That was 4.4?
7 A. That's correct.
8 Q. When we were last together, you relayed to us
9 a brief anecdote about your daughter at
10 school, stepdaughter, and that she came home
11 and reported to you that when kids came to her
12 school they were smoking Marlboro and all of a
13 sudden started smoking Camel. You remember
14 that?
15 A. Yes, I do.
16 Q. Do you have any reason to believe that the
17 Camel brand advertising in the area of your
18 stepdaughter's school is any different from or
19 more intense than Camel brand advertising in
20 the area from which these Marlboro smokers
21 came?
22 A. I don't know where the Marlboro smokers came
23 from, so I can't answer that.
24 Q. It may just be that your daughter's in, what

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1 you characterized earlier, a Camel school?
2 A. Yes.
3 Q. You earlier testified about the likert scale
4 responses that you received from smoking and
5 nonsmoking children when asked if they
6 intended to smoke at any time in the next
7 year, and that testimony was also in the
8 context of whether or not people developed
9 positive attitudes about smoking. You
10 remember that?
11 A. Yes.
12 Q. You wanted to know whether advertising
13 resulted in positive attitudes towards
14 smoking, is that correct?
15 A. That's correct.
16 Q. Your testimony earlier today I think was to
17 the effect that to the extent you can judge
18 attitudes about smoking by asking a child
19 whether smoking makes them more popular or
20 more attractive, that between 95 and 96 or 7
21 percent of all respondents said that they did
22 not have a positive attitude toward smoking,
23 is that correct?
24 A. That's correct.

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1 Q. You can't say that there's any difference
2 between that attitude whether that person was
3 or was not smoking or intended to or didn't
4 intend to smoke, is that correct, because you
5 didn't do the analysis?
6 A. Could you repeat the question?
7 Q. Remember I asked you, didn't you have evidence
8 available to you that dealt with the question
9 of appeal score?
10 A. Yes.
11 Q. The appeal score told you whether or not
12 certain children thought advertising was
13 appealing, is that correct?
14 A. That's correct.
15 Q. You had evidence on attitude, at least
16 attitude whether it would make them popular or
17 attractive, correct?
18 A. That's correct.
19 Q. You didn't try to correlate those two, did
20 you?
21 A. No.
22 Q. So you can't tell us that among the intended
23 purposes of your study is to show that people
24 who have a higher appeal score, that is, think

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1 the advertising is appealing, feel better
2 about or more positively about smoking, can
3 you, based on your study?
4 A. We didn't do that analysis.
5 Q. But you did collect information from the
6 students and, again -- I'll stipulate this has
7 been asked and answered, but I'll try it one
8 more time -- and, again, from those questions
9 you determined that 95 to 98 percent of the
10 students thought smoking was unappealing,
11 isn't that correct?
12 A. That's correct.
13 Q. I got to tell you, Dr. DiFranza, that last
14 little bit about why you threw in people who
15 didn't know whether or not they were going to
16 smoke and then reported them as people who
17 expressed an intention to smoke in your
18 article just kind of went over my head. And
19 I'll just have to read the transcript and find
20 out how you justified that.
21 MS. CUNEO: Objection. Characterizing
22 the witness' testimony. Is there a question
23 pending, or are you just testifying for the
24 record here?

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1 MR. DONAHUE: I think I'll make the
2 question. Thank you for asking.
3 MS. CUNEO: One that has not already been
4 asked and answered?
5 MR. DONAHUE: Well, I don't know. I'll
6 let you be the judge of that.
7 RECROSS-EXAMINATION BY MR. GREER
8 Q. Dr. DiFranza, could you briefly explain what
9 the methodological limits were of the pilot
10 study data with respect to the relative
11 attractiveness of Camels to adults and
12 children?
13 A. Yes. I think we spent the first day of
14 testimony on a big chunk of it discussing
15 whether or not the pilot study showed that the
16 ads were more attractive to adults than to
17 children.
18 And we just a few minutes ago referred to
19 Page 104 in which I state, "It would appear
20 that we have just disproved our theory that
21 the ads appeal more to kids than to adults."
22 This letter goes on to say, "However, further
23 analysis revealed that among the adults under
24 30 there was a sharp drop in the ads' appeal

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1 after the age of 22."

2 The pilot study was never intended to be
3 used to make a valid comparison between adults
4 and children. And to use it for that purpose
5 is a mis-use and is scientifically invalid for
6 the following reason: The children using the
7 pilot study were only ninth graders. They
8 were not a representative sample of all grades
9 nor of any location other than this one
10 school. And as it turned out, some of that
11 small sample of ninth graders were special
12 education students.

13 We wanted to make sure that everybody
14 would be able to understand the
15 questionnaire. And as it turns out, when
16 those children who participated in the pilot
17 study are compared to those who were randomly
18 selected from five different regions of the
19 country for the final study, is that their
20 attitudes towards the cigarette ads were much
21 more negative than those children in the final
22 study.

23 Contrary-wise the adults used in the
24 pilot study were also a small sample and not

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1 representative of adults in general. We found
2 that among the younger adults in the pilot
3 study 30 percent of that group were smokers.
4 This is well over 50 percent higher than one
5 would see in the general population.
6 So we had a group of adults in the pilot
7 study that were very much skewed to include
8 many more smokers than would be expected in a
9 general population in which less than 24
10 percent of adults in the general population
11 smoke according to the latest Gallup surveys.
12 As a result of this very skewed
13 population of adults using the pilot study,
14 the adults in the pilot study had much more
15 favorable attitudes toward the cigarette
16 advertising than we found in the final study.
17 The pilot study, therefore, included a skewed
18 group of children and a skewed group of
19 adults. They were both skewed in directions
20 opposite that of the groups seen in the final
21 study. Therefore, the pilot study produced
22 results that in some ways seemed to contradict
23 the final study.
24 As documentation to scientific integrity,

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1 despite these findings of the pilot study we
2 went on and conducted the final study without
3 changing anything, and we just let the chips
4 fall where they may. As it was, the final
5 study showed very, very clearly that the ads
6 were much more effective with children than
7 with adults.
8 Q. Turning your attention for a minute to a
9 slightly different or more global question,
10 Dr. DiFranza, are there other studies which
11 generally corroborate the findings in your
12 article?
13 A. Yes. I'm glad you asked that because --
14 MR. DONAHUE: Glad, but not surprised,
15 right?
16 MS. CUNEO: Move to strike that from the
17 record.
18 MR. WOOD: Talk into the microphone
19 please and the TV camera.
20 MS. CUNEO: Move to strike the editorial
21 comments.
22 A. Much of our discussion during these two days
23 of deposition has centered around the exact
24 percent of teenage smokers who smoke Camels.

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1 And the more attention has been placed on the
2 fact that the children and adults in our
3 survey were shown Camel ads before they were
4 asked what their brand preference was.
5 I had previously discussed the MacMillan
6 study which repeated our study but asked the
7 children what their brand preference was
8 before they showed any cigarette
9 advertisements. And in corroboration of our
10 results the MacMillan study showed in the same
11 school that even a higher percentage of
12 children stated that they were smoking Camels
13 than we found in our study.
14 Based on the MacMillan study I would have
15 to conclude, as I think any reasonable
16 researcher would, that there was no effect of
17 showing the ads before asking the brand
18 preference and our data is therefore accurate
19 as reported.
20 But one need not rely solely on my study
21 because there was also published in the same
22 issue of JAMA a much larger survey of children
23 from California. In this survey they found
24 approximately 25 percent of all the students

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1 who responded to this survey stated that they,
2 of those who were smoking, stated that they
3 were smoking Camels. In this study the
4 children were not shown any ads to my
5 knowledge, and, therefore, the results of this
6 study cannot be in any question.
7 There was also a study performed by the
8 Federal government through the COMMIT study
9 C-O-M-M-I-T, in which they surveyed high
10 school students from -- I guess they're ninth
11 grade students from 11 different communities.
12 And they found overall that 29.7 percent of
13 the ninth grade students who smoked and
14 usually bought their own cigarettes were
15 smoking Camels.
16 Also, earlier there was a question as to
17 the validity of asking children what their
18 favorite brands are, and some objection was
19 made that it's possible that a child's
20 favorite brand was Camel but they actually
21 were smoking some other brand because they
22 couldn't purchase cigarettes themselves.
23 Well, in this COMMIT government survey
24 they took brand preference only among the

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1 children who were actually buying their own
2 cigarettes, and 29.7 percent of those children
3 were smoking Camels.
4 So we have my study, the MacMillan study,
5 the California study, and the COMMIT study,
6 all of which give market share among the
7 underaged market to Camel between 25 percent
8 and 32.8 percent. The crucial factor here is
9 that before the cartoon advertisements for
10 Camel the Camel's market share among underage
11 smokers was less than 1 percent.
12 MR. DONAHUE: Can we just let him dictate
13 a report and attach it onto this?
14 MS. CUNEO: Move to strike.
15 MR. WOOD: Cut.
16 A. So whichever study one considers of these four
17 studies, they all demonstrate a very dramatic
18 increase in the use of Camels by underage
19 smokers.
20 MR. GREER: Thank you, Dr. DiFranza. We
21 trust that are R.J. Reynolds will soon be
22 withdrawing the brand entirely from the market
23 out of public spiritedness.
24 (Whereupon the deposition concluded
at 2:50 p.m.)

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1 SIGNATURE PAGE

2

3 I, JOSEPH R. DiFRANZA, M.D., do hereby
4 certify that I have read the foregoing
5 transcript of my testimony taken on Friday,
6 July 31, 1992, and further certify that it is
7 a true and accurate transcript.
8 In Witness Whereof, I have hereunder set
9 my hand this_____ day of_____
10 1992.
11
12
13
14
15 _____
JOSEPH R. DiFRANZA, M.D.
16
17
18
19 Read and subscribed to before me this
20 _____ day of_____, 1992.
21
22 _____
Notary Public
23
My Commission expires:
24
_____

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1 CERTIFICATE

2

3 COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK

4

5 I, Joann Denning, a Shorthand Reporter and Notary Public in and for the Commonwealth of
6 Massachusetts, do hereby certify that the foregoing deposition of JOSEPH R. DiFRANZA,
7 M.D. was taken before me on Friday, July 31, 1992.
8 The said witness was duly sworn before the commencement of his testimony; that the said
9 testimony was taken stenographically by myself and then transcribed. To the best of my
10 knowledge, the within transcript is a true and accurate record of said deposition.
11 I am not connected by blood or marriage with any of the said parties, nor interested
12 directly or indirectly in the matter in controversy.
13 In witness whereof, I have hereunto set my hand and Notarial Seal this 5th day of August,
14 1992.

15

16 JOANN DENNING
17 NOTARY PUBLIC

18

My Commission Expires:
19 5/28/93

20

PLEASE NOTE:
21 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION
22 OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE
23 CERTIFYING REPORTER.

24

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